

**SECOND SUPPLEMENTAL JOINT APPENDIX**

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 11,850**

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
*Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, *Respondent*

**On Review of Order of Subversive Activities Control Board**

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**EXCERPTS FROM PROCEEDINGS BEFORE SUBVERSIVE  
ACTIVITIES CONTROL BOARD AFTER SECOND  
REMAND**

**Excerpts From Hearing Before Examiner,  
Board Member Cherry. July 22, 1958**

17716

**Mrs. Mary Markward**

was recalled as a witness and testified further as follows:

Cross Examination

By Mr. Forer:

Q. Mrs. Markward, before 1940 you lived in  
17717 Chesterbrook, Virginia, is that correct? A. That  
is correct.

Q. And in 1940 you moved to the District of Columbia,  
right? A. Correct.

Q. And then in April of 1947 you moved back to Chester-  
brook, Virginia; is that right? A. That is right.

Q. But between 1940, when you moved to Washington  
from Chesterbrook, in April of 1947, you lived continually  
in Washington, D. C.; right? A. That is correct.

Q. Then in 1953 you moved from Chesterbrook to your  
present address at Silver Spring, Maryland, right? A.  
That is correct.

Q. Now, there was a period of time when you were paid,  
I believe it was \$20 a week, by the Communist Party for  
working in the office, is that correct? A. That is right.

Q. And that \$20 salary started in October of 1945, is  
that right? A. To the best of my recollection, sir, that is  
about the time.

Q. And how long did it go on; when did it stop? A.  
Sometime in the following or during the following  
17718 summer. If I may go on and explain a little more,  
so we don't get in a hassle, I was not continually  
paid for doing work in the office.

In about February they hired another part-time office  
worker, but continued my \$20 a week as part-time, for

payment as a part-time functionary, and part-time payment as a functionary, excuse me, I was being paid for n.y work as secretary-treasurer of the Party.

Q. When did the \$20 a week salary from the Communist Party stop? A. During the summer of 1946.

17725 Q. Now, what were your other expenses for your work for the F.B.I. in the Communist Party? A. Well, one major expense was baby sitter after my child was born in 1947.

Q. Now, just a minute. When was your child born? A. In July of 1947.

Q. And when did you start having a baby sitter for the child? A. The first of September.

Q. And how long did you employ the baby sitter? A. I had baby sitters as long as I was active in the 17726 Party, not necessarily the same one.

Q. Well, now, will you answer my question? Until when did you employ a baby sitter? A. Until October of 1949.

Q. And on what basis did you employ the baby sitter? I mean did the baby sitter live at your home or come when called, or how did you work it? A. For a while I had a baby sitter that lived in my home and stayed with the baby 24 hours a day because I was on call to go out 24 hours a day.

Q. How long a while was that? A. For one year.

Q. When? A. From the first of September, 1947 until the first of September, 1948, approximately.

Q. And then you tapered off on your baby sitter after that? A. No, it increased after that. The young lady continued to live at my home and went back to school, so I paid her to stay with the child at night and hired another sitter to be with the child in the daytime, so my sitter fees increased.

Q. That was also—you had sitters then for 24 hours a day after September 1948? A. That is right.

Q. How long did that continue? A. Until 17727 October of 1949.

Q. I see. Now, what other expenses did you have? A. The most major expense I had was transportation.

Q. From where to where? A. Mostly around town to get from meeting to meeting, from being with a Party member to another Party member and the various things that I had to do in my capacity as an officer of the Communist Party.

Q. This was streetcar fares and that sort of thing? A. It was mostly taxi fares. I got to cover more people by taking cab fares. I wouldn't say I never took a streetcar, but I did use an awful lot of cabs, and also in order to get to where my husband could pick me up to go home I would have to take a cab.

Q. Could you estimate how much money you spent on transportation in connection with your work for the F.B.I.? A. No, sir.

Q. Let's go back a moment to the baby sitters. How much did you pay these baby sitters? A. I was paying the girl \$15 a week that first year and I paid about \$25 a week when I had two of them.

Q. What other expenses did you have? A. Train fare from Washington to Baltimore.

Q. How often—well, how often did you take the train from Washington to Baltimore? A. It depended 17728 on the type of activity I was involved in.

Q. Well, was there a period when you regularly traveled at more or less regular intervals from Washington to Baltimore? A. There was a period when I went once a week; there was a period when I went three times a week.

Q. When did you go three times a week, during what period? A. The early part of—well, all of 1946 and into 1947 too, some of 1947.

Q. I am afraid I didn't quite get that. 1946 and how much of '47? A. Some of 1947, I said.

Q. How much of 1947 is "some"? A. Well, about the first two months, and then—it was the first two months and the last two months, that would be four months, and—

Q. That is when you were going to Baltimore three times a week? A. Approximately.

Q. And when were you going to Baltimore once a week? A. In 1946.

Q. Well, in 1946 you were going to Baltimore three times a week, you just told us. A. You have got me lost.

At the end of 1945, before I started three times a 17729 week when I got on the District Board in January of 1946.

Q. All right, when were you going to Baltimore regularly once a week? A. At the end of 1945.

Q. For how long in 1945? A. Two months.

Q. Now, aside from that—by the way, you went by train regularly? A. Usually.

Q. If you didn't go by train, someone drove you, is that it? A. That is right.

Q. When they drove you, you didn't pay for the ride? A. That is right.

Q. Now, aside from these periods you have told us about, when you were going to Baltimore at these regular intervals, how often did you go to Baltimore by train or by bus?

A. Once a month, almost all the time I was in the Party. When I wasn't going more often I went at least once a month, except when I was in the hospital being sick or having a baby or something like that.

Q. And those times you went by train? A. Almost always.

17730 Q. But sometimes you went by car? A. Occasionally.

17732 Q. Now, Mrs. Markward, eventually you reported to the Bureau of Internal Revenue the money you had received from the F.B.I., is that correct? A. That is correct.

Q. And in your return did you deduct your expenditures?

A. I figured my expenditures to the best of my recollection.

Q. But you did estimate them for the purposes of your income tax return? A. I did, sir.

Q. When did you file this return?

A. It was filed in February of 1954.

17736 Q. Well, can you tell us how much money you owed the Bureau of Internal Revenue on those F.B.I. payments which you reported in 1954? A. My recollection is I paid them something over \$1500.

Q. And that was after you had deducted expenses for these various years? A. That is right.

Mr. Cherry: And that covered what years, now?

By Mr. Forer:

Q. Well, what years did that cover? A. I filed the reports for 1943 through 1950 and I assume I was billed for everything I filed the reports for; that is what I was billed for.

17737 Q. Now, you became sick in October of 1949? A. That is correct. No, sir, I became—

Q. Well, let me put it this way. You became sick enough so that you were unable to do this work in October of 1949?

A. That is correct.

Q. And, as a matter of fact, you were paralyzed for several years and unable to do any work? A. I was paralyzed for a few months; completely paralyzed, but I wasn't able to go back into this activity. I was able to take care of my home.

Q. For a few months you were completely paralyzed then after that you were able to stay home, but you weren't

able to be active in doing this work that you had been doing before? A. That is correct.

Q. So that from October, 1949, you never went back into this life which gave rise to these expenses that you have been telling us about. Is that correct? A. That is correct.

17738 Q. Well, did you render any service to the F.B.I. after October 1949? A. In consultations, and that type of activity I did.

Q. You mean they would come to see you and confer with you and they would pay you for the information you gave in those conferences, is that about it? A. I never understood they were paying me for the information. They did still give me funds from time to time.

Q. But you weren't doing anything else for them besides talking to them in conferences? A. That is right.

Q. And you did not—these funds you also reported? A. What is that?

Q. These funds? A. Yes, sir.

Q. You didn't report them as gifts? A. I reported the funds on my income—

Q. As income? A. That is right.

Q. All right. So that after, from October, 1949 on, you didn't have expenses for dues in the Communist Party, did you? A. I paid dues through January of 1950.

Q. At what rate? A. Thirty-five cents, my recollection is.

17739 Q. Thirty-five cents a month? A. I think so.

Q. Did you pay any contributions during that period? A. No, sir.

Q. Did you buy any Communist literature during that period? A. I wasn't out of the house during that period?

A. I didn't do anything.

Q. So your answer is no? A. That is right.

Q. And, of course, you didn't pay for travel to Baltimore or whatever expenses you paid for baby sitters was at-



tributable to your illness, not for working in the Communist Party, correct? A. That is correct.

17741 Q. Well, Mrs. Markward, I believe you told us from October, 1949 on, you had no more of these expenses with the exception of thirty-five cents a month for dues. Your income, nevertheless continued from the Federal Bureau of Investigation, according to my information.

For example, on November 8, 1949, you received \$150.

On December 13, 1949 you received \$100. During 17742 1950 you received \$450. In 1951, prior to September 27th, you received about \$200.

Now, when you testified in September 1951, were you not aware that you had been receiving, since you became inactive in the Party, money from the F.B.I. which was more than you had been spending for these expenses? Weren't you aware of that? A. Well, this is going to get a little involved here again, Mr. Forer. I had expenses there no one had anticipated before, namely, medical and doctor bills. Now, the doctors don't know what caused my illness, but the Veterans Administration recognizes this illness as a service-connected disability. I believe that my activity in the Communist Party caused my illness, and I also believe—I don't know what was in the F.B.I.'s mind—I can't read it, that they were in some way trying to make me at least not unable to keep my head above water until I got my hospital and doctor bills covered to take care of my medical expenses, which are still continuing.

Q. Then when— A. When I went into expenses, I didn't list that as a necessary expense of the thing, but I say I can't help feeling that it is connected.

17743 Q. Yes, when you made out your income tax return, did you deduct your medical bills? I mean deduct it from these F.B.I. payments? A. I know what



you are saying, and I am thinking. I know it was discussed. I do not recall exactly whether or not the Internal Revenue allowed it or not.

Q. Mrs. Markward, on September 27, 1941, Mr. Taylor asked you to explain what sort of things these expenses were, and he even said, "make exactly clear just what sort of arrangements you had," and your answer was as follows:

"Answer: In this type of activity I was doing it was very necessary to pay dues, to make contributions, to buy literature, that type of thing, and other incidental things.

"Question: Transportation to Washington?

"Answer: Yes, that was part of it."

17744 Now, which one of these things you have mentioned, dues, contributions, literature, that type of thing, other incidental things, and transportation to Washington—which of those things in your mind included the expenses of your illness? A. I would have to answer that, as I understood his question and understood it as you read it right now, they were talking about expenses I had during the time I was active.

Your last question you asked me was the expenses I had after I ceased being active. I say I don't know that is why the F.B.I. paid me. I know that that is what most of it was used for. If they hadn't paid it to me, I would have found the money in some way in order to pay that.

Q. But, Mrs. Markward, even after October—after you became ill and inactive, you were still supplying the Federal Bureau of Investigation with information, were you not? A. To the best of my ability.

Q. Now, I want to invite your attention, in lieu of your latter explanation that you understood that Mr. Taylor's question related to the time you were active in the Party, was that your explanation? Wasn't that your explanation as to why you didn't mention your medical illness at the time? A. That is part of the explanation.

Q. Is there some other part? What is the other part?

A. There are a lot of expenses that I had that haven't been mentioned yet, and I can't recall them right now, 17745 but there are other expenses that I have had and will keep cropping up—

Q. I am afraid we don't understand each other. I was asking you to explain why it was that when you listed your expenses, or type of expenses for Mr. Taylor, you listed paying dues of thirty-five cents a month, or up to a dollar a month, which is what you told us about, and buying literature of a few dollars, and you never listed anything as big as the expenses of your illness, and you replied that you construed Mr. Taylor's question to relate to the period when you were actually active in the Party, before October of '49. Isn't that what happened?

Q. Do you understand the question, Mrs. Markward?  
A. You are asking me if I understood Mr. Taylor's question to indicate before 1949?

Q. Isn't that what you told me just a few minutes ago? Isn't that what you told me? A. As I say, I don't think we are clear. My answer to that is that Mr. Taylor asked me what type of expenses I had while I was active in the Party and I answered him.

17746 Q. And why did you leave out your medical expenses? A. Because they didn't occur while I was active in the Party.

Q. That is why you left them—so you thought Mr. Taylor was only asking you about expenses while you were active in the Party? A. That is my—

Q. That is your explanation? A. Well, I say that is part of my explanation. During my previous answer some 20 minutes back, I said it is still not clearly exactly whether or not my illness is particularly due to my work in the Party. Some people recognize it is, some say it is not. I am not certain, and at that time I did not have a doctor or a legal opinion on whether it was an accept-

able expense, so I did not give my illness as an expense of my activity in the Party.

Q. But the first part of your explanation is that you understood that Mr. Taylor was asking you about the time you were active in the Party. Now, I want to invite your attention to the preceding page, the page preceding what I just read to you.

Now, you see here where Mr. Taylor was still questioning you and he began this line of questioning as follows:

"Question: While you were supplying the Federal Bureau of Investigation with information, Mrs. Mark-17747 ward, were you paid any salary by them? What sort of financial arrangements did you have with them?

"Answer: I was not paid a salary by the Federal Bureau of Investigation. Nothing I did for my government was contingent upon receipt of any money from the F.B.I. or any other government agency."

Then there was a colloquy, and the next question was the question I read before, namely:

"By Mr. Taylor:

"Question: Did you receive any money from them at all?

"Answer: I did receive contributions for the expense of the work I was doing from time to time."

And so forth.

Now, having read the question by Mr. Taylor which introduced this line of questioning, do you still abide by your explanation that at least one reason why you omitted medical expenses when you gave your answer in September of 1951 was because you thought that Mr. Taylor was only referring to the period you were active in the Party, that is the period before October, 1949? Do you still abide by that?

. . . . .

A. Yes, sir.

17751 Q. Mrs. Markward, I now show you what has been admitted in evidence as Respondent's exhibit—we don't know the number at the moment—and which is a compilation of the payments made to you by the Federal Bureau of Investigation.

Let me ask you first, have you ever seen this compilation—not necessarily this copy, but any copy of this 17752 compilation before? A. Yes, sir.

Q. You have seen it? When did you last see it? A. First and last, I saw it about a week ago.

Q. You don't challenge the accuracy of it, do you? A. No, sir.

Q. Now, I notice here— A. I don't challenge the accuracy of the amounts that were paid to me, sir. Let me put it that way.

17753 Q. Now, Mrs. Markward, do you recall testifying in the trial of Marie Richardson? A. Yes, sir.

Q. That was in the U. S. District Court for the District of Columbia? It was a criminal trial, was it not? A. That is right.

Q. Do you remember when you testified there? A. It would have been in about February or March of 1952, I believe.

Q. Now, I just want to show you your testimony that you gave in the Richardson case. This is from the ap- 17754 pendix on appeal and at page 55 I invite your attention to the fact that that is where your testimony begins—do you see that? A. Yes.

Q. I want to ask you whether you were asked the following questions and whether you gave the following answers:

"Question: Now, you have just answered Mr. Hicks by saying that you were paid for your services and for your expenses, is that correct?"

"Answer: Yes."

Were you asked that question and did you give that answer on cross examination? A. To the best of my recollection, yes.

Q. Now, it would be better perhaps if I went back and started earlier with what Mr. Hicks asked you. Were you asked the following questions and did you give the following answers on direct examination by Mr. Hicks:

"Question: Mrs. Markward, did you receive any expense money or any other funds from the Federal Bureau of Investigation during this period from 1943 to 1949 or 1950, whenever it was?"

"Answer: Yes, I did."

17755 "Question: How were you paid, on what basis?"

"Answer: I guess I received money for services and expenses during the time that I did this activity. I was not salaried, as far as that. I mean any particular amount per week for salary or anything like that."

"Question: Was it agreed in advance with the F.B.I. what you would be given for expenses?"

"Answer: No, it was not."

Were you asked those questions and did you give those answers on direct examination in the Richardson trial? A. To the best of my recollection, I did.

Q. All right, now, let's go to the cross-examination.

"Question: Now, you have just answered Mr. Hicks by saying that you were paid for your services and for your expenses, is that correct?"

"Answer: Yes."

"Question: What was your plan with respect to that matter?"

"Answer: I volunteered to do this service without compensation. Subsequently, after I had found out that it

would be possible for me to join the Party, the F.B.I. agent told me they would be able to furnish me from time to time with certain funds to better help me carry out this activity because he did not feel it was necessarily proper for a citizen to be put to all this expense out of their own pocket.

17756 "Question: Now, when you say all this expense, Madam, will you tell us as well as you can how much you were paid in the nature of expenses and how much in the way of salary, compensation, or whatever you may choose to refer to it as?

"Answer: I can't give you a differentiation. At irregular times I received irregular amounts of money which included expenses, and if I had any left over I suppose that is what went to service.

"Question: Would you say if you had anything left over you would submit to the F.B.I. an expense account?"

I will re-read that.

"Question: When you say if you had anything left over, would you submit to the F.B.I. an expense account?"

"Answer: I did not.

"Question: So when you speak of expenses, you were given an amount without regard to what your expenses actually were, is that correct?"

"Answer: There was some regardless of what the expenses actually were because I didn't have—I didn't get rich while I was doing this by no means. I put everything I had in the way of anything into what I was doing over these years.

"Question: I am not making a suggestion that you got rich, Madam. I am trying to confine it, if I can, to what amounts you were paid and if there were any allocations with respect to expenses, and with respect to which

17757 you were being paid for services I would like for you to tell us.

"Answer: There was no allocation.

"Question: How often did you receive these amounts?"



"Answer: It varied with the frequency of my contacts with the Federal Bureau of Investigation which varied from a few at a time to periods when several months elapsed.

"Question: And so sometimes over a period when you received numerous contacts you were again paid—

"Answer: No, I did not say that. I said that there were times when several months elapsed that I didn't have any contact with the F.B.I.

"Question: Can you give us any idea what these respective amounts were?

"Answer: I can't recall. I believe the first time I received any fund it was something like \$4, but after that I don't recall what funds I received. It was sufficient to take care of; for instance, getting a baby sitter after my child was born when I had to have a baby sitter 24 hours a day.

"Question: You were connected, Madam, between 1943 and 1949?

"Answer: That is right.

"Question: And you received money on various occasions, I presume, during that time?

"Answer: That is right.

"Question: How often would you say within a year?

17758 "Answer: Maybe 20. I would say it would be a pure guess. I mean I didn't look towards getting funds for what I was doing. If I had funds I spent them. That is all. It was kind of beside the point to me which is why I don't have a good recollection of the thing.

"Question: Well, I asked you as to whether you could give me any idea as to what within a year you received.

"Answer: My best guess would be within 15 or 20 times, but I say that is a pure guess. I have nothing to really base it on.

"Question: During the period of these years, your guess is that about 15 or 20 times each year you received money from the F.B.I.?

"Answer: That is right.

"Question: Can you give me some idea of what an average amount was that you received?

"Answer: I don't have a good guess as to the average because there were some variations. At times I was, for instance, going to Baltimore once or more a week and, as I say, I had expenses such as going to have a baby sitter 24 hours a day and so-forth. We didn't discuss this with them, but they knew it and the amount did vary to accommodate such expenses as that.

"Question: Can't you help us at all as to what amount you got on any of these occasions you speak of?

"Answer: I think perhaps I received \$40"—let 17759 me re-read that—"I think perhaps I received \$40 on one occasion and perhaps I received \$100 on one occasion, but I can't say. It is not fair to me or anything else to say I received \$100 15 or 20 times a year, which isn't true."

Now, were you asked those questions and did you give those answers? A. It is my recollection that I did.

Q. Well now, Mrs. Markward, just take a look at this exhibit showing the payments to you. Let's take a look at 1947, glance down at those figures for '47 and glance down at the figures for '48. When did you say—and for '49. When did you testify in the Richardson case? A. In '52.

Q. Now, after looking at those figures for '47, '48 and '49, would you say that it is not fair to you to say that you received \$100 from the F.B.I. 15 or 20 times a year, and that that isn't true?

Mr. Broome: That is argumentative, Your Honor. I object to the question.

Mr. Cherry: Overruled.

The Witness: Well, what I said, sir, was that I received irregular amounts at irregular times, and I could not give a correct estimate as to how much I had received, and I was right because if I had been asked to estimate at that time



what I had received, it would have been much  
 17760 lower than the figures show here, because I didn't  
 know—

By Mr. Forer:

Q. Mrs. Markward, please try to answer the questions.  
 You ought to be used to the kind of questions I ask. I  
 have questioned you occasionally in the past. A.  
 17761 Yes. Seeing the figures before me, it would be fair  
 to say that I got as much as \$100 a month, 15 or  
 20 times in a year.

Q. That would be fair to say that? A. It would be fair  
 to say that since I have seen the figures before me. It  
 did not—you said, I believe, that I had time to explain  
 this answer.

Q. You mean you now want to explain your answer  
 that it would be fair to say that?

Mr. Cherry: You may answer.

The Witness: The enlargement that I wanted to make  
 to that answer was that I did not at the time I made that  
 answer in 1952, I believe it is, have these figures before  
 me. I had asked for these figures, and they had not been  
 provided to me. I had no idea in this world how much  
 money I had received from the F.B.I., and if I had named  
 a flat estimate of the money, it would have been much lower  
 because I knew that when I got all through there was  
 nothing left over, and I think it is always better—I am  
 delighted to have the figures so that we have an accurate  
 statement instead of an estimate that you have spent this  
 morning getting out of me on expenses like that. I wish  
 I had kept an account of the expenses that I had, or had  
 been able to keep one.

17783 Redirect Examination

17791 Q. On the question of your payments from the FBI and the receipts that you gave them for your payments, were the payments received by you with great regularity; in other words, every week, every two weeks, or every three weeks? A. It was not that regular, sir.

Q. The payments were at irregular times? A. That is correct.

Q. Now, as far as the mechanics of accounting for your payments, would you sign a receipt for one payment  
17792 each time you received a payment? A. Normally

I did, but sometimes I would sign a receipt for two or three payments, because time had elapsed, and things like that.

Q. In other words, there came times when you didn't have contact with the Bureau for two or three weeks at a time and you might be asked to sign three or four receipts at a time? A. Sometimes it might be as much as a couple of months that I didn't have contact with the FBI.

Q. And at that time you would sign receipts for payments that you had received over that period of time? A. That is correct. Sometimes they would put money in my bank account, and I would have to sign receipts for that money—I mean that would be a time when it was not good to be seen in contact with the FBI agent, and sometimes there would be an extended period and they would put money in my bank account, and sometimes I didn't get a chance to open the bank statement because I had to burn it up before I got it as far as my apartment, or stick it in the incinerator before I got to the apartment, but when they would come, they would give me the receipts and I would sign them.

I hadn't any reasonable doubt that I had gotten as much money as they told me I had got at the time, or that I had received in the past.

Q. Would you say it was because of what you  
17793 have said it might account for the regular payments reflected by the exhibit that you were shown

a short while ago? A. That is the only way I could account for it.

18129

## SUBVERSIVE ACTIVITIES CONTROL BOARD

**Memorandum Opinion and Order on Motions to Strike**

On January 9, 1958, the Court of Appeals remanded this proceeding to the Board for production of documents in Government files in relation to witness Markward. In responding to a petition for rehearing and motion for leave to adduce additional evidence filed by the Communist Party the Government related a newly discovered circumstance to the Court, i.e., the existence of disc-recordings of an FBI interview with Budenz, and as result the Court, with the Government acceding, then also recommended for production of certain "statements" made by witness Budenz to the Federal Bureau of Investigation. Subsequently, the Board requested clarification from the Court on the Budenz question and in its order of June 16, 1958, the Court stated it intended by its order of April 11, 1958, to require production of only statements by Budenz which the Party had demanded at the original hearing, these being "statements" (as defined by Public Law 85-269) by Budenz relating to his testimony at the hearing concerning the so-called Starobin letter and the Childs-Weiner conversation.

Respondent subsequently obtained for inspection the documents ordered to be produced and, at its request, witnesses Markward and Budenz were ordered recalled for

further cross-examination. Witness Markward was examined by both parties on July 22, 1958. As to witness Budenz, however, it developed that he was physically unable to testify, as will be related in discussing the motion to strike his testimony.

Respondent, on August 7, 1958, then made motions to strike in relation to witnesses Budenz and Markward.

18130

*Witness Budenz*

We turn first to the pending motions relating to witness Budenz. In view of Budenz' unavailability for further cross-examination, respondent moved that all of his testimony in this proceeding be stricken. (Tr. 17834) In the alternative, in the event the foregoing is denied, respondent moved: (1) to strike all of Budenz' testimony insofar as it relates to the Starobin letter and the Childs-Weiner conversation (Tr. 17835); (2) for an order directing the Attorney General to produce for respondent's examination the agents of the FBI who participated in the interviews with Budenz which took place during the period from the 6th through the 12th of December, 1945, and directing that such agents bring with them their complete notes taken during the interviews and any statements or writings furnished the FBI by Budenz either prior to or during such interviews (Tr. 17835, 17860); and (3) that all other portions of the recorded interviews with Budenz, i.e., Board Exhibit 2, which are relevant to any matter to which Budenz testified in this proceeding be made available to it. (Tr. 17835.)

Petitioner opposed all respondent's motions as lacking in merit.

It is necessary first to review the record as far as pertinent for background purposes. Witness Budenz testified on direct examination at the original hearing for slightly less than 2 days. He was cross-examined for approximately 5 days. He was on redirect for 23 pages of the transcript

and on recross for 1 page. Further, there were 8 pages of direct examination on the Starobin letter and 30 pages of cross-examination on it. There were 2 pages of direct examination on the Childs-Weiner conversation and 10 pages of cross-examination on it.

It is clear from the record that Budenz was extensively cross-examined on his direct testimony and collateral matters going to credibility. It is apparent, also, that substantial cross-examination took place on the Starobin letter and the Childs-Weiner conversation. During the course of cross-examination on the Starobin letter, Budenz was questioned, *inter alia*, concerning two prior statements he made on the subject, viz., in a book he authored and testimony before a congressional committee. Likewise, in relation to the Childs-Weiner conversation, Budenz was cross-examined, *inter alia*, on a prior statement he made in relation to foreign financial aid to respondent before a congressional committee.

Upon objection of petitioner, production of reports by Budenz to the FBI on those two topics, however, was denied to respondent at the original hearing. Those denials were specifically asserted as error by respondent on the second review by the Court of Appeals, i.e., after the Supreme Court's remand. The Court of Appeals ruled there was no error in the denials since the record 18131 showed the requested reports were written accounts made by a third party (an FBI agent) purporting to show what the witness had said or done. The Court concluded, therefore, that the denial of production of the reports, being hearsay documents, should be affirmed.

As was indicated above, however, in preparing to respond to the Party's petition for rehearing and motion for leave to adduce additional evidence, both of which were concerned in part with this Budenz question, the Government discovered the existence of a "statement" by Budenz to the FBI in December 1945 in the form of disc-recordings

made without the knowledge of Budenz. The Government thereupon made this discovery known to the Court and acceded to a remand of the Budenz question insofar as it went to production of so much of the disc-recordings as related to the Starobin letter and the Childs-Weiner conversation, these being the testimonial topics wherein the denials of production took place at the original hearing. After this accession by the Government in the form of answers to the Party's petition for rehearing and motion for leave to adduce additional evidence the Party then filed another motion for leave to adduce wherein it sought to expand the extent of the remand as acceded to by the Government. In its order of April 11, 1958, and its subsequent order of June 16, 1958 (which ruled on a Board motion to clarify) the Court remanded the Budenz question for production of documents but, in so doing, restricted its direction of production to those demanded by the Party at the original hearing, i.e., "statements" by Budenz to the FBI in relation to the Starobin letter and the Childs-Weiner conversation.

Accordingly, the Board ordered that petitioner produce to the Hearing Member all "statements," as defined in Public Law 85-269, made by witness Budenz to the FBI concerning the Starobin letter and the Childs-Weiner conversation. In response to this direction petitioner submitted all the disc-recordings of the December 1945 interview of Budenz by the FBI. The Presiding Member excerpted the material relating to those two subjects and furnished it to respondent.<sup>1</sup> The disc-recordings were sealed and are in the record as Board Exhibit 2. Respondent acquiesced in the procedure in relation to the disc-recordings. Respondent's request for recall of witness Budenz for further cross-examination was granted. Petitioner then submitted a letter from Budenz' personal

<sup>1</sup> Prior to the determination of Budenz' unavailability, and at the instance of an agreement by both parties (Tr. 17824-17830), these exhibits were received in evidence as Communist Party Exhibits 97-101, inclusive.



physician to the effect that, in the physician's opinion, Budenz was physically unable to testify due to a heart condition. This opinion was confirmed by a heart specialist appointed by the Presiding Member to conduct an independent physical examination of Budenz. He was of the opinion that if Budenz were to testify under any of the conditions outlined<sup>2</sup> it might seriously affect his health or cause his death due to an extreme heart condition. In view of the medical opinions, all parties are in agreement that witness Budenz is unavailable to testify in this proceeding and it was so ruled.

Turning now to its motion to strike, respondent contends that under the applicable rule as stated by *Wigmore on Evidence*, § 1390, petitioner is responsible for the deprivation to respondent of cross-examination of the witness Budenz and that therefore all Budenz' testimony should be stricken. Further, that this notwithstanding, all Budenz' testimony should be stricken because under the rule as stated by *Wigmore*, the respondent incurs a material loss by reason of Budenz' unavailability for further cross-examination. (Tr. 17838-57.)

Petitioner contends that under the proper application of the law as set out by *Wigmore*, none of Budenz' testimony should be stricken as there already has been adequate cross-examination of Budenz on all phases of his testimony including that concerning the Starobin letter and the Childs-Weiner conversation; and that since the Budenz statements already produced to respondent are consistent with his testimony, no material loss is incurred by it as a result of the witness' unavailability. (R. 17864-81.)

The Presiding Member is of the view that no responsibility, as that term should be construed here, is attributable

<sup>2</sup> These conditions were testimony by Budenz either in "open court," by deposition or by cross-interrogatories. The procedure with respect to the latter was explained to the physician in the Presiding Member's letter to him requesting the physical examination.

to petitioner for Budenz' unavailability and, conversely, neither is respondent responsible for this circumstance. Respondent has suffered no deprivation of cross-examination with respect to those portions of Budenz' direct testimony not involved in the Court's remand.<sup>3</sup> The record shows that respondent clearly had adequate opportunity, which it utilized, to conduct cross-examination on that testimony, and that in presenting its evidence respondent was given every opportunity to rebut Budenz. Accordingly, the motion to strike Budenz' entire testimony is denied.

18133 On the other hand, Budenz' direct testimony concerning the Starobin letter and the Childs-Weiner conversation and the cross-examination heretofore conducted thereon presents, in the light of the statements produced to respondent, an incomplete picture and one where, resolving all doubts in respondent's favor, the purposes of cross-examination have not been sufficiently accomplished. Accordingly, respondent's motion to strike this testimony is granted and it is ruled that Budenz' testimony concerning the Starobin letter at R. 13837, line 1, through R. 13840, line 22; R. 13841, lines 3 through 10; R. 13841, line 24, through R. 13844, line 10; R. 14096, line 9, through R. 14125, line 19; and that concerning the Childs-Weiner conversation at R. 13818, line 10, through R. 13819, line 21, and R. 14061, line 15, through R. 14070, line 13, is stricken, as well as Communist Party Exhibit 67, which was introduced during cross-examination on the Starobin letter.

Turning to respondent's other alternative motion to order produced for its examination the agents of the FBI

<sup>3</sup> In this connection, *Wigmore* states: "But the true solution would be to avoid any inflexible rule, and to leave it to the trial judge to admit the direct examination so far as the loss of cross-examination can be shown to him to be not in that instance a material loss." Courts differ in their treatment of this difficult situation; except that, by general concession, a cross-examination begun but unfinished suffices if its purposes have been substantially accomplished." (§ 1390, 3rd Ed.) (Footnotes deleted.)



who participated in the Budenz interviews, the other portions of the recorded Budenz interviews contained in Board Exhibit 2 and the other documents enumerated, it is ruled that these matters fall outside of the scope of the Court's orders governing the remand, and that no justification is shown for granting these requests. Respondent clearly had adequate opportunity at the hearing to cross-examine Budenz on all matters to which he testified except the Starobin letter and the Childs-Weiner conversation. Furthermore, it is now established that Budenz is unavailable and there is no possibility of adhering to the normal requirement of confronting the witness with any prior statements. This motion is therefore denied.

#### *Witness Markward*

Respondent moves to strike the entire Markward testimony "because she has been proven to be a perjurer" (Tr. 17885).

In remanding the Markward question, the Court directed production of (1) Markward's written report to the FBI concerning Annie Lee Moss (2) her testimony in the Defense Department Security Hearing concerning Moss (3) her written report to the FBI concerning the so-called Frankfeld meeting and (4) the records of Markward's compensation from the FBI. At Board direction, these documents were furnished respondent.<sup>4</sup>

At respondent's request, witness Markward was recalled for further cross-examination. Respondent cross-examined at length on the records of Markward's compensation from the FBI and other facets relating to such compensation. In relation to the Frankfeld question, respondent merely examined briefly on the procedure she followed in making reports to the FBI and a few

<sup>4</sup> In relation to the reports to the FBI concerning Moss, however, it was necessary for the Presiding Member to excise so much of the reports as did not relate to Moss.

other preliminary questions, but did not examine her on the contents of her report. On the Moss matter, respondent declined to cross-examine Mrs. Markward, taking the position that since it was unable to procure the findings of the Security Hearing Board there was no purpose in doing so (Tr. 17785), this notwithstanding it had access to the Markward testimony in the Moss hearing wherein it alleged she committed perjury. Since respondent sought to leave Markward under attack on the Moss question, her testimony in the Moss Security Hearing and her reports to the FBI on Moss were admitted into evidence as Attorney General Exhibits 498A, 499-511, inclusive.

Respondent grounds its motion to strike on contentions amounting to attacks on her credibility. These contentions are more properly viewed as presenting testimonial and credibility evaluation questions and, in the view of the Presiding Member, respondent has given no sufficient reason to strike her testimony:

Accordingly, it is

**ORDERED** that all respondent's motions are denied except the alternative motion to strike the Budenz testimony on the Starobin letter and the Childs-Weiner conversation, which is granted, and it is further

**ORDERED** that counsel for the parties consult and then advise the Presiding Member by August 28, 1958, in regard to whether argument is desired on the sufficiency of the evidence question. If either party requests such argument it will be heard at 10:00 A.M. (EDT), on Wednesday, September 3, 1958, in Room 111 Lafayette Building, 811 Vermont Avenue, N. W., Washington, D. C.

**FRANCIS A. CHERRY**  
Francis A. Cherry  
*Board Member—Examiner*

August 25, 1958  
Washington, D. C.

18139

SUBVERSIVE ACTIVITIES CONTROL BOARD

. . . . .  
**Recommended Decision of Board Member Francis A. Cherry**  
**on Second Remand Proceeding**  
**Issued September 19, 1958**  
 . . . . .

18141

STATEMENT OF THE CASE

Upon review of the Board's Modified Report of December 18, 1956,<sup>1</sup> the United States Court of Appeals for the District of Columbia Circuit by its opinion issued January 9, 1958,<sup>2</sup> remanded this proceeding to the Board under section 14(a) of the Act.

The opinion of January 9, 1958, required the production of documents in the possession of the Federal Government in relation to the testimony of the Attorney General's witness Mary Stalcup Markward. On the remaining questions of law the court affirmed the Board except that due to the nature of the remand it reserved judgment on an over-all credibility charge by the Communist Party against witness Markward and on the sufficiency of the evidence question (see 254 F. 2d 314, and the memorandum of the court issued April 11, 1958). The court also ordered references to Attorney General Exhibit 484, appearing on pages 94 and 120 of the Modified Report, stricken. These references, of course, are to be stricken (see Appendix for findings recommended to be stricken). Upon reappraisal

<sup>1</sup> The Board's original Report and Order were issued on April 20, 1953, and were affirmed upon review by the United States Court of Appeals for the District of Columbia Circuit (223 F. 2d 531) and thereafter the proceeding was remanded to the Board by decision of the Supreme Court (351 U.S. 115). The Board's Modified Report now under consideration was issued following that remand.

<sup>2</sup> The court's opinion was followed by three orders, the latest being issued June 16, 1958, as will be related.

of the evidence, absent these references, no alteration in the Board's findings is indicated.<sup>3</sup>

18142 Subsequently, on January 24, 1958, the Communist Party (respondent before the Board and petitioner before the Court of Appeals) filed with the court a petition for rehearing and modification and, concurrently, a motion for leave to adduce additional evidence. In the course of preparing a response to the petition and motion, Government counsel discovered that in the files of the Federal Bureau of Investigation were disc recordings of an interview witness Louis Francis Budenz had with the FBI in December 1945 which had been recorded unbeknownst to Budenz. This circumstance was related to the

<sup>3</sup> Additionally, review of the record reveals that a reference to Attorney General Exhibit 481, quoted at page 145 of the Modified Report, should likewise be stricken (see Appendix). As this exhibit was cumulative in effect, its deletion does not affect the remainder of the Board's findings. There is an inadvertent reference to Markward in the first full paragraph on page 37 of the Modified Report, which should read "Meyer" and, on page 130, a citation to Attorney General Exhibit 406, which should read "Pet. Ex. 405."

It should also be noted that the Board at page 196 of the Modified Report officially noticed that a number of respondent's leaders had been convicted under the Smith Act and on page 197, footnote 1, the names of these leaders are listed. The Board Member-Examiner takes official notice that as a result of subsequent court action, the convictions of 8 of the 32 leaders have been nullified. (See *Yates v. United States*, 354 U.S. 298, and orders of dismissal of indictments issued December 2, 1957, by the United States District Court, S. D. Calif., and *United States v. Jackson*, No. 24445, C.C.A. 2d, decided August 4, 1958.) In order to conform the Modified Report to the matters officially noticed it is recommended that the following names and the case citations in which they were originally convicted be stricken from the footnote on page 197, namely: Alexander Trachtenberg, George B. Charney, Sidney Steinberg (Stein), James Jackson, William Schneiderman, Dorothy B. Healey, Rose C. Kusnitz, and Frank Carlson. A modification is also required in the third full paragraph at page 199 of the report by changing in the first sentence thereof the clause "and three of the alternates" to read "and two of the alternates" and by changing the opening word of the second sentence of that paragraph from "Four" to "Three" and striking the name "Schneiderman" from the sentence. A reconsideration of the evidence of record shows that these amendments have no cognizable effect upon the preponderance of evidence in support of the Board's findings.

court and, concurrently, the Government acceded to so much of the respondent's petition for rehearing and motion as pertained to two requests the Party had made at the original hearing for the production of statements which Budenz made to the FBI and which had been denied. (See the two memoranda for the Board filed in the Court of Appeals on February 7, 1958.)

The Communist Party then filed a supplemental motion for leave to adduce additional evidence which related to the Budenz matter and, in substance, sought to broaden the scope of the remand acceded to by the Board. On April 11, 1958, the court entered an order, accompanied by a memorandum, remanding the Budenz matter to the Board for the production of certain "statements" by Budenz to the Federal Bureau of Investigation. Subsequently, on May 23, 1958, the Board asked for clarification by the court of this order and memorandum, and on June 16, 1958, the court entered an order containing the clarification requested. In effect, the court stated that its order of April 11, 1958, should be construed as restricting production to Budenz' "statements" relating to the Starobin letter and Weiner conversation only. The court did not, as the Party requested, order production of all Budenz' "statements" relating to the subject matter of his entire testimony in this proceeding.

18143 Pursuant to Board order, petitioner presented at the reopened hearing all "statements" and "records" ordered by the Court of Appeals to be produced. These were turned over by the Board Member-Examiner to counsel for respondent. In some instances it was necessary to excise irrelevant matter before transmitting the material to respondent.

The Party's request for the recall of the two witnesses involved, Markward and Budenz, was granted. The witness Markward was cross-examined by respondent on July 22, 1958, and, on redirect, by counsel for petitioner.

With respect to witness Budenz, however, a question arose as to his availability due to his physical condition. Petitioner submitted a letter from Budenz' personal physician stating that in his opinion it would imperil Budenz' health due to a heart condition to appear as a witness in this proceeding. The Board Member-Examiner deemed it advisable to have an independent physical examination conducted by a heart specialist in New York City. By affidavit dated August 4, 1958, the specialist reported the results of his physical examination of Budenz and his conclusion that due to an "extremely serious cardiovascular disease" any examination of Budenz "were it to be carried out before the Board or by deposition or by cross-interrogatories in his home, might seriously affect his health or cause his death." He was of the opinion that "even the slightest amount of emotion could very well precipitate a serious outcome in [the] patient's life." (See Board Exhibit 3-C.)

Upon receipt of the doctor's affidavit, the hearing was reconvened on August 7, 1958, and the parties agreed Budenz was unavailable for recall. Thereupon, respondent moved to strike all of Budenz' testimony, and in the alternative moved (1) to strike Budenz' testimony in so far as it relates to the Starobin letter and the Weiner conversation, (2) for an order directing the Attorney General to produce for respondent's examination the agents of the FBI who participated in the December 1945 interviews with Budenz, and directing that such agents bring with them their complete notes taken during the interviews and any statements or writings furnished the FBI by Budenz either prior to or during such interviews, and (3) that all other portions of the recorded interviews with Budenz, i.e., Board Exhibit 2, which are relevant to any matter to which Budenz testified in this proceeding, be made available to it. Respondent also moved to strike all of witness Markward's testimony.



By memorandum opinion and order of August 25, 1958, the Board Member-Examiner denied these motions<sup>4</sup> except in so far as they sought the striking of the 18144 testimony concerning the Starobin letter and the Weiner conversation.<sup>5</sup> (See memorandum opinion and order of the undersigned dated August 25, 1958.)

Both parties waived oral argument before the Board Member-Examiner on the sufficiency of the evidence.

Turning now to a consideration of the evidence adduced on this remand and its effect upon the credibility of witnesses Markward and Budenz and upon the findings in the Modified Report, there will first be considered the matters pertaining to the witness Markward.

#### *Witness Markward*

Pertinent background concerning Markward has been stated by the Court of Appeals in its opinion of January 9, 1958 (254 F. 2d 314, 326-330), and except where necessary to bring the matter up to date, this history will not be repeated here. The court in this opinion directed that the Board order the Attorney General to produce (1) Markward's reports to the FBI and her testimony in a Defense Department security hearing concerning Annie Lee Moss; (2) Markward's report to the FBI concerning the Frankfeld matter; and (3) records of Markward's com-

<sup>4</sup> In so far as the motions went to the production of notes, statements, or writings in relation to the Starobin and Weiner matters it was, of course, presumed that petitioner had already produced all documents or recordings in its possession which constituted "statements," under Public Law 85-269, on those matters in complying with the Board's orders of April 29, 1958, May 20, 1958, and June 18, 1958.

<sup>5</sup> The testimony stricken from the record is as follows: concerning the Starobin letter at R. 13837, line 1, through R. 13840, line 22; R. 13841, lines 3 through 10; R. 13841, line 24, through R. 13844, line 10; R. 14096, line 9, through R. 14125, line 19; concerning the Weiner conversation at R. 13818, line 10 through R. 13819, line 21, and R. 14061, line 15, through R. 14070, line 13, as well as Communist Party Exhibit 67, which was introduced during cross-examination on the Starobin letter.

pensation from the FBI. Each of these matters will be discussed in the order enumerated.

At the reopened hearing, in conformity with the orders of the Court of Appeals, Markward's FBI reports concerning Moss, being 12 in number, were produced to respondent as was Markward's testimony concerning Moss in the Moss security hearing. Markward was recalled for further cross-examination and, although cross-examined by respondent's counsel on other matters, no cross-examination was conducted concerning Markward's identification of an Annie Lee Moss as a onetime Party member.

Thereafter, upon motion of petitioner, Markward's FBI reports concerning Moss, the majority being copies of actual Communist Party records such as club and branch attendance, membership and dues rosters, were received in evidence as Attorney General Exhibits 499 through 511, inclusive. Similarly, a copy of the Markward testimony in the Moss security hearing was received in evidence as Attorney General Exhibit 498-A.

Exhibits 499-511, inclusive, corroborate Markward's testimony in the Moss security hearing (A.G. Ex. 498-A, pp. 60-66) and all the foregoing exhibits corroborate 18145 the testimony she gave relating to this matter during the previous remand proceeding before the Board. (R. 17082-17132; S.J.A. 2231-2252.) During that remand proceeding the Board, after inspecting the security hearing transcript *in camera*, ruled that "our review reveals that respondent's showing that witness Markward testified falsely in the Moss proceeding and was disbelieved in that proceeding is not supported." (R. 17315.)

The instant remand proceeding, in view of the respondent's failure to pursue cross-examination, has added to the record for the Board's consideration only the 12 FBI documents which corroborate Markward; and in consider-



ing the entire record it is the Board Member-Examiner's opinion that Markward's credibility has not been in any way impaired by this matter but rather, the Party's contention on the Moss matter has been shown to be groundless.<sup>6</sup>

Turning now to Markward's testimony concerning a statement by Party leader Frankfeld to the effect that Party members would not bear arms against the Soviet Union, the Court of Appeals in its opinion of January 9, 1958, ordered produced to counsel for the Communist Party, the report made by witness Markward concerning the Party meeting in Baltimore, Maryland, where, according to her testimony, the statement had been made. The court noted that the Board had inspected this report *in camera* during the earlier proceeding on remand (254 F. 2d at p. 327), but ruled that failure to produce the document to Party counsel offended the principle of the Supreme Court's opinion in the *Jencks* case (353 U.S. 657). At the reopened hearing counsel for the Party was given the complete report made by Markward to the FBI concerning the Party meeting in question. The Party's cross-examination consisted only of (1) identification of the FBI report, which was then offered and received in evidence as Communist Party Exhibit 96, and (2) a few questions relating to her manner and method of making reports to the FBI. Markward was not cross-examined about the contents of this report.

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<sup>6</sup> The situation that has resulted on the Moss question is that the Party's own records, copies of which are now in evidence, and the authenticity of which it does not dispute (A.G. Exs. 499-511, inc.), show an Annie Lee Moss, 72 R Street, S. W., Washington, D. C., was a Party member in the mid 1940's. Yet, respondent on several occasions charged before the Court of Appeals and the Board that witness Markward committed perjury in testifying before the Defense Department to what the Party's own records showed. As has been stated, the Party declined to cross-examine witness Markward on the Moss question after copies of the Party's own records were produced to it.

18146 The further proceedings on remand have added nothing of substance for consideration<sup>7</sup> that was not already before the Board when it inspected *in camera* the Markward FBI report concerning this incident and ruled "that no substantial credibility question was presented." (R. 17346; memorandum opinion and order of December 13, 1956.) The Board had not credited Markward's testimony concerning the Frankfeld statement in its Modified Report because of the conclusory nature of this testimony and the imprecision therein exposed by cross-examination and no findings in the Modified Report were in any way based upon this testimony.<sup>8</sup>

Upon independent consideration of Markward's entire testimony concerning the Frankfeld matter (R. 7721-7732; 7809-7811; 7816-7822; J.A. 742-745; S.J.A. 2271-2277) and Attorney General Exhibits 331, 332, 333, and 334, received in connection therewith (R. 7724, 7729, 7751) and the report about this meeting to the FBI (C.P. Ex. 96), the Board Member-Examiner concludes that the Party has not established a material impairment of Markward's overall credibility.<sup>9</sup>

The Board Member-Examiner is of the opinion, however, that the Board's action in not crediting Markward's testimony concerning the Frankfeld statement, particularly in view of its interpretative quality, was proper and recommends that the Board adhere to this conclusion. Since no findings in the Modified Report are based in any way upon such testimony no change in that Report is recommended.

<sup>7</sup> The Markward FBI report, however, previously sealed as Board Exhibit 1 is now in evidence unsealed as Communist Party Exhibit 96.

<sup>8</sup> See Board's brief (following remand) in the Court of Appeals for a detailed discussion of this question (pp. 31-37), with which the undersigned agrees.

<sup>9</sup> See, *infra*, however, for a discussion of the Board's prior conclusion to view all her testimony with caution and the recommendation to the Board that it continue to apply the same standard.

Considering next the matter of Markward's compensation from the FBI, at the original hearing Markward testified on direct examination that she was not paid a salary by the FBI; that she received contributions to the expense of the work she was doing; and that such expenses included paying dues; making contributions, buying literature, "that type of thing, and other incidental things," including transportation expenses. (R. 7676.)

Under cross-examination at the original hearing she testified that no formal financial arrangements were made with the FBI concerning money; that she volunteered to perform her services without remuneration of any kind; that she at no time submitted a statement of expenses to the FBI, but due to frequent contact with agents the FBI had an idea of what she was doing; that she signed receipts for money received, but could not recall any specific amounts for the entire period of her activities or for individual years; and that she received money in "irregular amounts at irregular times," which amounted to reimbursement to her. (J.A. 750.)

After the hearing panel had issued its Recommended Decision, but prior to the issuance of the Board's Report, the Party moved to reopen the hearing to adduce additional evidence, charging, in so far as Markward was concerned, that she had lied in testifying she had received no compensation for her services to the FBI. This motion was accompanied by a stipulation to which the Government was a party, entered into in the trial of *United States v. Flynn, et al.* (U.S.D.C., S.D.N.Y., C-136-7), which showed that Markward had received \$24,026.45 in payments from the FBI over a period of 10 years, of which \$147 was designated as paid for expenses and the remainder as paid for services.

By memorandum opinion and order of February 24, 1953, the Board reviewed Markward's testimony giving consideration to respondent's contentions and the stipula-

tion mentioned, and concluded the showing was insufficient to reopen the hearing.

Without reviewing the course this Markward compensation question has taken subsequently, both upon judicial review and before the Board, it is sufficient to state that the Court of Appeals included the question in remanding the proceeding to the Board (254 F. 2d 314, 329-330). In so doing, the court ordered production of the "records of Markward's compensation from the FBI." These records were made available to respondent and Markward was then subjected to extensive cross-examination on the basis of such records and other facets, the records being received in evidence. (C.P. Ex. 95.)

It is fair to say that Communist Party Exhibit 95 shows that the FBI accounted for payments to Markward for the years 1943 through 1949 on a weekly and semi-monthly basis, and that since that time payments have been docketed generally on a monthly or bi-monthly basis, with occasional lapses in regularity. It is also fair to say that during the years 1943 and 1944 the amount of the single payments for services varied from \$3 to \$70 with the majority being of \$25, \$30, and \$35 denominations. For the remaining years, from 1944 through 1958, the amounts of individual payments varied from \$20 to \$400 with the majority of payments docketed during 1945 being \$40 or \$45; the majority in 1946 being \$90 and \$180; the majority in 1947 being \$180 and \$270; the majority in 1948 being \$180; the majority in 1949 being \$180 and \$200; all in 1950 being either \$50 or \$100; all in 1951 being \$50; and all in 1952 being either \$50 or \$100. Those credited to the years 1954, 1955, 1956, 1957, and 1958 varied in amounts ranging from \$20 to \$120.

Under cross-examination upon the further hearing just concluded, Markward disputed that she actually received money from the FBI on a weekly or semi-monthly basis or that she received money at a given rate such as \$40 or \$90

a week over a given period of time. Markward explains the increase in payments in the latter part of 1945 from about \$45 per week to \$90 per week by stating that it was during this period that she resigned her job as hairdresser and devoted her entire time to Communist Party activity. She did not dispute that she received the total amounts of money indicated and explained that she assumes from the exhibit the FBI was making payments to her according to some rate but that she had no knowledge of this and had no arrangements for payment; and that she never discussed with the FBI whether she should receive more or less money. She testified she either received cash or the money was deposited to her checking account but she was unable to recall receiving any specific payments at any specific time, such as a payment in August of 1947 totaling \$400.

Upon further cross-examination at the instant hearing, Markward explained what she considered as items of expenses, and by any reasonable calculations, these could run into substantial amounts in excess of a thousand dollars each year. It is patent that the use of the term "expenses" in the FBI records does not coincide with the witness' concept of that term. To illustrate, there are several years in which the compensation records show no entries whatsoever for expenses, yet, obviously, using Markward's definition of the term, she had substantial expenses during each of these years, and it is reasonable to assume that under the ordinary business connotation of the term "expenses," Markward would have had some expenses during those years in performing her function as an informant. On the other hand, it is apparent that, taking the most liberal estimate of what Markward regarded as expenses, she received substantial payments for services in excess of what her expenses would be. Considering Markward's testimony under cross-examination in the light of the FBI compensation records, it is significant, in the Board Member-Examiner's view, that the

witness fails to recall specific large payments and disputes the regularity of the payments, many being over \$100 in amount spaced two or three weeks apart over a period of years. It is also significant that, using her characterization of expenses, there was no testimony adduced reconciling the large amounts of money she received with the connotation conveyed by her testimony on direct examination at the original hearing that she received "contributions to the expense of the work I was doing from time to time." (J.A. 734.)

It is concluded, therefore, that Markward's testimony at the original hearing concerning her receipt of compensation from the FBI should not be credited. That 18149 her testimony concerning this subject was in large measure colored by an antipathy on her part against being characterized as one who profited in performing what she considered a patriotic service is borne out by the record and by her demeanor under cross-examination which showed a resentment against questions having any such imputation.

The record is clear, however, that the Board has long been aware of the amount of money received by Markward from the FBI and the record shows there has been no misapprehension about the matter.<sup>10</sup> This testimony concerning compensation is relevant solely to the interest or bias of the witness and while it in itself is not worthy of credit, an assessment of the record and observation of the witness does not warrant disregarding *in toto* her testimony relating to the issues in this proceeding.<sup>11</sup>

<sup>10</sup> As indicated, *supra*, the Board was aware of this factor before it issued the original Report and Order inasmuch as the Party submitted a copy of the stipulation entered into by the Government and the defendants in *United States v. Flynn, et al., supra* (J.A. 200-202; 212-215), and it has scrutinized Markward's testimony as that of a paid informant (Mod. Rept., p. 6).

<sup>11</sup> The outcome of the Moss question illustrates that it would be a mistake to view Markward as a witness whose entire testimony should be disregarded.



In this connection, the Modified Report of the Board shows that, although the witness testified at length on direct examination, the Board relied on her testimony for only approximately 15 subsidiary findings, and there was other credited evidence to the same effect in respect to 13 of the findings. As to the remaining 2 subsidiary findings, one is to the effect that an individual, who otherwise plays no part in the proceeding, went to Moscow for training during the period when the Party admittedly was a section of the Communist International (Mod. Rept., p. 165), and the other is to the effect that in one instance Party records were altered to date a member's resignation to conform with a prior denial of Party membership by the individual in a court proceeding (Mod. Rept., p. 189). The significance of these findings is minimal. In fact, the effect of her entire testimony is a minor factor in the proceeding, as is apparent from the Modified Report (Mod. Rept., p. 4, fn. 2).

The Board has already viewed the testimony of the witness with caution (Mod. Rept., p. 4). It is felt that, upon reassessment, this standard should be continued. In so doing, it is concluded that the testimony of Markward now relied upon by the Board in its Modified Report, which in almost every instance is corroborated, is unaffected and, therefore, no modification of findings is warranted.

18150

### *Witness Budenz*

Louis Francis Budenz, a functionary of the Communist Party from 1935 to 1945 and witness for petitioner, testified, among other things, in the original hearing concerning a letter sent in 1945 to the *Daily Worker* by its correspondent, Joseph Starobin, then in San Francisco. The content of the letter, hereinafter referred to as the "Starobin letter," related to the 1945 reorganization of the Party. Budenz also testified to a conversation in 1939 with the then Party treasurer, Charles Weiner, herein referred to as the "Weiner conversation," which related

to the issue of financial aid. The Court of Appeals affirmed the Board's refusal of the Party's request for production of "alleged reports" on the Starobin letter and Weiner conversation. *Communist Party v. Subversive Activities Control Board*, 254 F. 2d 314, 326. As stated, however, before the court's judgment was entered, the discovery of the Budenz recorded "statements" was made with the consequent developments outlined previously. As indicated, *supra*, the present remand in so far as it involves Budenz was to produce any "statements" given by Budenz to the FBI concerning the Starobin letter and the Weiner conversation. (See court orders and memorandum of April 11, 1958, and June 16, 1958.)

During the hearing on this remand, there were delivered by petitioner to the Board Member-Examiner 30 discs containing mechanical recordings on both sides (except for 2 discs cut on 1 side only) covering a period in December of 1945 when Budenz was interviewed by agents of the FBI. The Board Member-Examiner extracted therefrom and delivered in typed form to counsel the portions found to be producible to respondent under the April 11, 1958, and June 16, 1958, orders of the Court of Appeals.<sup>12</sup> Thereupon, the excerpts were offered by respondent and, without objection, received in evidence as Communist Party Exhibits 97, 98, 99-A, 99-B, 100, and 101.<sup>13</sup>

On the basis of the excerpts, counsel for the Party requested the recall of Budenz for further cross-examination, and this was granted but, as stated, it developed that

<sup>12</sup> It was agreed at the hearing that the Board Member-Examiner would excerpt and deliver to counsel for respondent in typed form those portions of the disc recordings to which the Board Member-Examiner found respondent entitled.

<sup>13</sup> The discs are numbered from 1 to 58 by figures scratched into the discs near the spindle hole. The exhibits are, respectively, one excerpt from disc side numbered 6, one from side 8, two from side 10, one from side 16, and one from side 42. The entire group of 30 discs (containing 58 cut sides) is sealed and identified for record purposes as Board Exhibit 2.

Budenz was unavailable. Thereupon, the Party made the motions referred to, *supra*, and the Board Member-18151 Examiner, by reason of the failure of opportunity for further cross-examination on the two subjects, issued his written ruling striking Budenz' testimony on them, *viz.*, the Starobin letter and Weiner conversation. (See memorandum opinion and order dated August 25, 1958.) There are now considered (a) recommended changes in the Board's Modified Report arising from striking such testimony, and (b) Party contentions as to Budenz' general testimonial credibility.

*Changes in Modified Report arising from the  
striking of certain Budenz testimony*

The striking of Budenz' testimony concerning the Starobin letter requires that there be deleted from page 98 of the Modified Report the findings of fact based upon such testimony.<sup>14</sup>

At page 100 of the Modified Report there is the conclusion that:

... in 1945 respondent reverted to "its basic Communist principles" (*supra*) and reemphasized Marxism-Leninism upon the issuance of a statement to the effect that it should do so by a leading foreign spokesman of the world Communist movement.

As appears from the Modified Report, the conclusion is that the 1945 reorganization of the Party was motivated by a statement issued by Jacques Duclos, a leader in the world Communist movement. Deletion of the Budenz testimony on the Starobin letter does not give rise to any modification in the conclusion since it is clearly established by documentary evidence and the credible testimony of several witnesses other than Budenz.

<sup>14</sup> See Appendix for this material.

To illustrate, such evidence shows: that in April of 1945, there was issued through *Cahiers du Communisme*, official organ of the French Communist Party, an article "On the Dissolution of the Communist Party of the United States" written by Jacques Duclos (A.G. Ex. 208), a leading member and spokesman of the French Party and a former member of the Executive Committee of the Communist International, who is recognized as a leading Marxist-Leninist; that Duclos condemned the dissolution in 1944 of the Communist Party and the change to the Communist Political Association, condemned the policies followed by the latter under Browder's leadership as contrary to victorious Marxist-Leninist doctrine, and declared that the objectives of the American Communists presuppose the existence of a powerful Communist Party; that during the three months following the issuance of the 18152 Duclos article, Party-wide meetings were held to indoctrinate the members on the merits of the Duclos attack; that in July 1945, only three months after the Duclos criticisms, respondent reverted back to the Communist Party and reestablished the militant Marxist-Leninist substance to its program, policies and activities as Duclos advocated; and, that the reconstituted Party paralleled the type of organization advocated in the Duclos article. Browder, whose policies were attacked by Duclos, was deposed as leader and subsequently expelled from the Party. (See, e.g., A.G. Exs. 208, 209, and 210; Mosely, J.A. 561-563; Meyer, J.A. 704-707; Blanc, R. 8275-8291; Baldwin, R. 12185-12189; Lautner, J.A. 948, 957, R. 11618, 11971-11978; Mod. Rept. pp. 99 and 100,)

In addition to Budenz' testimony on the Starobin letter, the Modified Report shows that the Board considered Budenz' testimony about meetings of the *Daily Worker* staff on the Duclos article. (Mod. Rept., p. 98, 1st full par.) There is no connection between such testimony and

the incident of the Starobin letter.<sup>15</sup> Moreover, testimony given by other witnesses corroborates or substantiates Budenz. His testimony that he, as managing editor of the *Daily Worker*, was instructed to print the Duclos article is corroborated by the fact that it was printed therein. (See Lautner, R. 11618; Baldwin, R. 12185-12189.) His testimony on the importance of the Duclos article and that the *Daily Worker* staff meetings were called to discuss the Duclos article is substantiated by the testimony of other witnesses showing the importance given to the article at other Party meetings called to discuss it. (See Meyer, J.A. 705; Blanc, R. 8275, 8282; Cummings, R. 8619-8620; Baldwin, R. 12185-12189; Lautner, R. 11618) Budenz is corroborated by Meyer concerning the reaction of Party functionaries to the Duclos article. (Mod. Rept., p. 98.) Furthermore, it is indisputable that the *Daily Worker* was the official organ of the Party and this, of course, involves close Party control of positions appearing therein.

For the foregoing reasons, except for striking from the Modified Report the findings as to the Starobin letter, no modifications or changes are recommended in the other findings and conclusions on the 1945 reorganization of the Party.

Coming now to Budenz' testimony on the Weiner conversation, the striking thereof requires deletion from the Modified Report of the findings at page 159 based thereon.<sup>16</sup>

The Board's conclusion on the issue of "financial aid," set forth at page 163 of the Modified Report, shows that little if any materiality was given to the now stricken testimony. The Board found that there

<sup>15</sup> Budenz did not indicate any connection, such as discussion of the Starobin letter at these *Daily Worker* staff meetings, and there is no evidence that the Starobin letter was mentioned or discussed at any of the many other meetings throughout the Party on the Duclos article.

<sup>16</sup> See Appendix for material that is recommended to be stricken from the Board's Modified Report.

was no evidence of any substantial foreign financial aid to the Party subsequent to 1940 [the date when the Party announced its disaffiliation from the Communist International] and no evidence of any such aid after 1944. The only significance given by the Board to the *entire* evidence relied upon concerning financial aid was that such aid was furnished by the Soviet Union "during the formative period of respondent in the United States," which obviously was prior to 1940. The Board drew no inference as to continued aid. In fact, the Board recognized from the record that the foreign financial aid disappeared when the Party "became a going organization." (Mod. Rept., p. 163.) Accordingly, since financial assistance in the formative period is clearly established by evidence other than Budenz' testimony, the deletion of this testimony does not require any change or modification in the Board's conclusion on "financial aid." (Mod. Rept., p. 163.)

One other item of Budenz' original testimony also concerned the issue of financial aid, *i.e.*, his testimony as to the furnishing free to the American Communist Party, through the Moscow news agency "Runag," of political news dispatches. This testimony is not related to nor connected with the instance of the Weiner conversation. The nature of the Board's conclusion on "financial aid" demonstrates that the fact of contributions by Runag in the years involved is of very slight materiality. The contention of the Party that Budenz' testimony on Runag was impeached by cross-examination in the original hearing is rejected in the Modified Report, page 159, footnote 1, and no change is recommended.<sup>17</sup>

A review has been made of all of the findings and conclusions made in the Modified Report in the light of the striking from the record of the Budenz testimony on the Starobin letter and the Weiner conversation. It is found

<sup>17</sup> The general testimonial credibility of Budenz in the light of the proceeding on remand is discussed *infra*.



that none of the remaining findings or conclusions on the various issues of the case were colored by or depend for their support upon the stricken testimony.

### *General Credibility*

There remains for consideration the contentions of the Party as to the general testimonial credibility of Budenz in the light of the proceeding on remand. Counsel for the Party, in arguing his motions to strike, contended that:

18154 . . . quite apart from the question of our deprivation of the right of cross examination, Budenz' testimony must be stricken because the excerpts which have been produced, even without cross examination, demonstrate that the man was a perjurer, that he lied consciously and deliberately and I submit that neither the Board nor any other fact-finding body can rely on testimony which is demonstrably shot through with perjury. (R. 17858-17859.)

Counsel for the Attorney General challenged the foregoing, arguing:

. . . it is our position that these excerpts not only fail to show that Budenz committed perjury but they support what he did say on his direct examination . . . (R. 17879.)

In striking the Budenz testimony on the Starobin letter and the Weiner conversation because the cross-examination thereon was not completed, the Party has obtained all it could possibly have obtained on those items. In striking that testimony, the benefit of any doubt was given to the cross-examiner. This action does not mean, however, that it is appropriate to speculate that additional cross-examination in the light of the produced statements would have shown that Budenz deliberately lied about these two things. Neither may it be speculated, as counsel for the Attorney General suggests, that the only result from further cross-examination would be the explanation by the witness that

it did not occur to him to tell about the two instances during the interviews with the FBI here involved, and that he was not asked the questions. The only reasonable conclusion is that there is no way of knowing what the witness would have said on further cross-examination. The incomplete picture has, as stated, led to the finding that under the circumstances the cross-examination on the two items was not adequate and that the testimony involved should, therefore, be stricken.

Involved here from the produced statements are prior omissions where in such earlier recitations the witness had an opportunity to relate the matters. But a review of the direct testimony, the original cross-examination (which was extensive) and the now produced earlier statements, viewed in the light of the unavailability of the witness, leads to the conclusion that the record does not support the Party charge of perjury on the part of the witness.

18155 Even if there were a conclusion that a witness consciously lied about a material matter, there is no requirement that the trier disbelieve or strike the whole of his testimony. (*Communist Party v. Subversive Activities Control Board*, 254 F. 2d 314, 330-331.) Nothing is more common in all kinds of judicial decisions than to believe some and not all of a witness' testimony. (*NLRB v. Universal Camera Corp.*, 179 F. 2d 749, 754.)

There are telling considerations extrinsic to Budenz' testimony which demonstrate that his unsubstantiated testimony should be credited, viz., (a) there was other credited, parallel testimony in several instances, (b) in others he was corroborated, and (c) in the remaining relatively few others, where he stood alone, there was a failure to rebut though he had been specific on time, place, and people present.

The experiences of Budenz in the Communist Party were from 1935 to 1945. Testimony parallel to that given by Budenz on a number of items was also given by other

witnesses for petitioner, notably by John Lauter whose experiences in the Party were from 1929 to 1950, and by Frank Straus Meyer whose experiences were from 1934 to 1945. An example is the testimony of witnesses other than Budenz with regards to the Duclos article, as summarized, *supra*, and which evidenced world Communist movement motivation in the reconstitution of the Party.

Another example, relating to the Party's recognition and acceptance of the leadership role of the Soviet Union, is the parallel testimony given by Budenz and Lautner on the policy of the *Daily Worker* never to disagree with the Soviet Union and to support positions taken by the Soviet Union.<sup>18</sup> This in turn was corroborated by the mass of evidence on nondeviation. Still another example is the parallel testimony given by Budenz and Lautner on the true meaning of the references to Marxism-Leninism in the Party constitution. In this connection, a reading of the Modified Report shows clearly the quantity of evidence in addition to that given by Budenz showing the Party's implementation of Marxism-Leninism.

As to the corroborative evidence, it appears not only in general areas but as to details as well, such as the corroboration of Budenz' testimony regarding Gerhardt Eisler furnished by the witnesses Kornfeder, Meyer, Nowell, and Lautner.

18156 It is against this background of parallel testimony in many instances, and of substantial corroboration in others, that the relatively few instances are to be considered where Budenz' testimony stands alone. In such instances, Budenz was specific as to time, place, and people present yet neither the individuals named by Budenz nor any other Party officials were called in denial. An

<sup>18</sup> This position of the *Daily Worker*, the official Party organ, is further evidenced in the record by documentary material. The Party witness Gates, in effect, acknowledged that the *Daily Worker* never supported the United States when its policies were opposed to those of the Soviet Union.

example is the Budenz testimony that at a meeting of Party functionaries, held *during the period of the Hitler-Stalin Pact*, an official in the Party, Eugene Dennis, declared that the Party should be prepared if the United States joined Great Britain in the war against Hitler to turn the "imperialist" war into a civil war, as Lenin advocated. In evaluating this testimony, the Board noted two things at footnote 1, page 184, of the Modified Report: that the testimony was credible in view of documentary evidence showing such a course to be in fact part of Communist doctrine if conditions are favorable; and, that Dennis, to whom Budenz attributed the statement, was not called in rebuttal. Under the conditions of that period, there is no reason to view that testimony other than as a demonstration of a Party leader mouthing Party doctrine.

The Budenz testimony does not depend for its acceptance upon the stricken testimony concerning the Starobin letter and the Weiner conversation. Additionally, the considerations set forth above demonstrate that Budenz should not be disbelieved. The Party's general testimonial credibility charge against the witness has been reviewed before by the Board and the Court of Appeals and the proceeding on this remand does not justify a change in the earlier conclusions.

#### RECOMMENDATION

In the light of the foregoing, it is recommended that the Modified Report be amended accordingly and that the Board affirm its prior determination and order.

FRANCIS A. CHERRY

Francis A. Cherry

*Board Member-Examiner*

September 19, 1958

Washington, D. C.

Findings recommended to be stricken from the Modified Report at the pages indicated are as follows:

Mod. Rept.

Page No.

Finding

94 "We note in this connection that in August 1951 respondent quoted with approval in *Political Affairs* a statement by the leader of the Communist Party of China that the *History of the Communist Party of the Soviet Union* 'is the highest synthesis, the highest generalization of the world Communist movement.' (Pet. Ex. 484, p. 35.)"

98 "Budenz testified that while at the *Daily Worker* office he read part of a letter from Starobin, the *Daily Worker* correspondent attending the United Nations Conference on Organization in San Francisco, which was to the effect that Manuilsky [a leading Soviet Union Communist and Ukranian (*sic*) representative to the United Nations Conference] had expressed indignation that the American Communist Party had not criticized the American Government leaders more severely, and stated the American Party should observe more carefully the guidance and counsel of the French Communists."

98, fn: 1 "1 Respondent contends that cross-examination showed that Budenz made inconsistent statements regarding this matter in a book he had previously written and in prior testimony before the House Un-American Activities Committee. We do not read those prior statements as substantially inconsistent and the essence of his testimony on this is credited."

120 "Speaking through *Political Affairs* for August 1951, respondent took the position that 'The scales are weighed in favor of the people's peace forces, headed by the Soviet Union' and there is quoted with obvious approval the statement of Comrade Mao Tse-Tung, 'the tested leader of the Communist Party of China' that the *History of the Communist Party of the Soviet Union* 'is the highest synthesis, the highest generalization of the world Communist movement.' (Pet. Ex. 484, pp. 11, 35, emphasis added.)"

18158

Mod. Rept.  
Page No.

Finding

145 "This same official in an article published in *Political Affairs* in May 1951 similarly stated:

'Within the boundaries of our country, an oppressed nation, the Negro people in the Black Belt of the South, is fighting for full freedom . . . not only the Negro workers, but the Negro people as a whole . . . are a most important and staunch ally of the American working class, and . . . the future fate of the American working class is closely bound up with the future of the Negro nation.' (Pet. Ex. 481, p. 32.)"

159 "In 1939 the treasurer of the CPUSA stated that it was impossible to put additional CPUSA funds into the *Midwest Daily Record*, a CPUSA-controlled paper, because at that time communications to their sources of funds abroad, i.e., the Soviet Union, had been disrupted."



18233

## SURVERSIVE ACTIVITIES CONTROL BOARD

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**Memorandum and Order**

This proceeding is before us on remand from the United States Court of Appeals for the District of Columbia Circuit for the production, *inter alia*, of all "statements" by the witness Budenz to the FBI in petitioner's possession relating to the so-called Starobin letter and the Weiner conversation. The Court adopted the definition of statements in Public Law 65-269, 18 U.S.C.A., § 3500. (See opinion of the Court issued January 9, 1958 (254 F. 2d 314) and subsequent orders of the Court issued April 11, 1958, and June 16, 1958.)

An order of the Board directing that such "statements" be produced at a hearing before Board Member Cherry resulted in the production of disc recordings of oral statements made by Budenz to agents of the Federal Bureau of Investigation while being interviewed over a number of days in December 1945. These disc recordings were reviewed by the Board Member-Examiner and relevant parts excerpted and given to counsel for respondent. Later, by agreement of counsel for both parties, the excerpts were received in evidence as Communist Party Exhibits 97, 98, 99a, 99b, 100, and 101.

Upon recall of the witness Budenz for further cross-examination, it became established that he was unavailable due to a grave heart condition. In view of his unavailability, respondent moved to strike all of Budenz' testimony or, in the alternative, to strike his testimony concerning Starobin and Weiner and for production of additional material and the calling of FBI agents as witnesses. The Member-Examiner struck Budenz' testimony concerning the Starobin letter and the Weiner conversation due to the witness' unavailability for further cross-examination on these matters and denied the motions in 18234 all other particulars. Thereafter, on September

19, 1958, the Member-Examiner issued his Recommended Decision in which he stated it was presumed that petitioner had complied with the order to produce all pertinent "statements" of Budenz. In its exceptions respondent challenged this presumption and at oral argument on exceptions held October 22, 1958, contended that the record did not support such a presumption and that petitioner had not represented that all such statements had been produced. (Respondent Exception No. 3, p. 3; Tr. 17923-17926.) Petitioner did not reply in argument to this specific assertion and the proceeding was submitted for the issuance of the Board's final Report.

On November 13, 1958, however, petitioner moved for leave to file a supplemental affidavit addressed to the above contention by respondent.<sup>1</sup> The effect of this motion was to request the Board to stay issuance of its final Report until petitioner had an opportunity to submit the affidavit, and this stay was granted.

On November 21, 1958, petitioner then submitted the "Supplemental Affidavit" of attorney Worthington to the effect that there are no substantially verbatim statements other than the disc recordings already produced, of information given by Budenz to the FBI on the two subjects.<sup>2</sup> There were submitted with the affidavit for our *in camera* inspection, however, all of the notes of the interviewing agents made at the December 1945 interview. The affidavit states that "there are no other handwritten notes

<sup>1</sup> The affidavit sought to be supplemented was made by attorney Worthington on August 6, 1958, pursuant to an inquiry of the Member-Examiner as to whether a disc recording existed of an FBI interview with Budenz on December 6, 1945. This affidavit was received as Board Exhibit 4, and related that the interview of December 6th, an agent's notes on which were submitted with the November 21, 1958, affidavit of Mr. Worthington, had not been "recorded."

<sup>2</sup> The Worthington affidavit is hereby accepted for filing as a representation of counsel supplementing prior representations of petitioner's counsel relating to this matter.

by Agents of any subsequent interview concerning the Starobin incident and the Weiner-Childs matter." The affidavit is silent as to the existence of possible memoranda or reports made by the FBI agents of their interviews with Budenz. There is no assertion that the handwritten notes are the only remaining documents purporting to record communications, oral or written, by Budenz to the FBI relating to the two pertinent topics.<sup>3</sup> The last Worthington affidavit gives rise to an impression that petitioner's counsel may be of the belief that counsel should make the determination as to whether any documents (or other recordings) in petitioner's possession constitute "statements" under the pertinent statute. This impression is given substance by the belated presentation of the handwritten notes and petitioner's assertion that they do not constitute a "statement," as defined in 18 U.S.C.A., § 3500.

Respondent, on November 26, 1958, filed an opposition to the supplemental affidavit and also moved to reopen the hearing based, in substantial part, on the assertions of the affidavit itself.

The Board is of the view that only it can properly determine whether a pertinent document (or other recording) constitutes a "statement" under the guides of 18 U.S.C.A., § 3500 (cf. *United States v. Waldman*, 159 F. Supp. 747; *United States v. Papworth*, 156 F. Supp. 842). We do not read the Court's opinions and orders remanding this proceeding as indicating otherwise.

In view of the assertions of the last Worthington affidavit, when considered in the light of the record on the Budenz question, the Board is unable to conclude with certainty that all pertinent Budenz "statements" have

<sup>3</sup> We are aware of petitioner's earlier representation that, except for the December 1945 interview, no other interviews of Budenz were recorded mechanically and, of course, we accept that representation.

been produced and that the Court's remand, insofar as possible (due to Budenz' unavailability), has been complied with.

Accordingly, in view of the foregoing, it is

ORDERED that on or before December 8, 1958, petitioner shall produce for the Board's *in camera* inspection all notes, memoranda, reports, or other documents or recordings, purporting to record any oral or written communications by Budenz to the FBI, as well as any document written, signed or approved by Budenz himself, if any, which petitioner may have in his possession relating to the Starobin letter and the Weiner conversation; and it is further

ORDERED that compliance therewith shall be without prejudice to respondent's pending motion filed November 26, 1958, and petitioner's right to reply thereto; and it is further

ORDERED that if any such documents or other material are presented to the Board in compliance with the 18236 above order, petitioner may accompany such presentation with a memorandum setting forth any position in respect thereto deemed appropriate in the matter of subsequent Board action.

By the Board (Member Donegan not participating).

(Signed) DOROTHY McCULLOUGH LEE  
Dorothy McCullough Lee  
Chairman

(SEAL)

December 3, 1958  
Washington, D. C.

\* \* \* \* \*

### Memorandum and Order

Pursuant to order of the Board issued December 3, 1958, petitioner on December 12, 1958, submitted for the Board's *in camera* inspection three Federal Bureau of Investigation "To and From" memoranda and one FBI intra-Bureau letter. By accompanying memorandum, petitioner asserts that "on inspection of these documents by the Board, it will be manifest that they are not subject to production to the Respondent and, in the event the Board disagrees with this assertion, requests to be heard."

The four documents contain additional material relating to the Starobin letter and/or the Weiner conversation not heretofore produced. However, we find that inspection of them on their face is insufficient to reach a determination as to whether they are "statements" as defined by 18 U.S.C. 3500, which definition was adopted by the Court of Appeals in this proceeding. Further inquiry is necessary to determine whether the pertinent portions of the documents are "statements." Therefore, it is the Board's view that the individuals who authored the pertinent portions of the memoranda dated June 7, 1946, and August 2, 1950, the summaries of information covered by memorandum dated February 7, 1947, and the letter dated March 4, 1947 (not the signatories thereto if they are not the authors) be produced to give testimony to aid the Board in reaching a determination. In other words, the Board desires the assistance of those individuals who are competent to testify on the appropriate factors 18254 set forth in the statute to be considered in determining whether the pertinent portions of these

<sup>1</sup> Regarding the agents' notes of the interviews which took place on December 7, 10, and 12, 1945, submitted by petitioner with a memorandum of November 21, 1958, these are not involved in this order for reasons to be stated in a forthcoming Board memorandum.

documents are "statements." Counsel for both parties are, of course, entitled to be present. Accordingly, it is

ORDERED that petitioner produce the authors of the relevant portions of the above-described documents (not the signatories thereto if they are not the authors) at a hearing to be held on December 22, 1958, at 10:00 A. M. in the Board's hearing room (Room 113), 811 Vermont Ave., N. W., Washington, D. C., to give testimony on the foregoing, and it is further

ORDERED that at the hearing both parties will be given an opportunity to be heard on whether the pertinent portions of the documents are "statements" as defined by 18 U.S.C. 3500, and present any other pertinent matters.

By the Board (Members Donegan and Cherry not participating, the latter due to absence).

(SEAL) (Signed) DOROTHY McCULLOUGH LEE  
Dorothy McCullough Lee  
*Chairman*

December 17, 1958  
Washington, D. C.

18259

SUBVERSIVE ACTIVITIES CONTROL BOARD

### Notice and Order

Pursuant to order of the Board issued December 3, 1958, petitioner on December 12, 1958, submitted certain documents for the Board's *in camera* inspection and in so doing requested to be heard on whether the documents are subject to production to respondent. The Board fixed December 22, 1958, as the date for a hearing thereon and ordered that petitioner produce at the hearing the authors of the documents to give testimony to aid the Board in determining whether the relevant portions should be turned over to counsel for respondent for inspection.



Prior to the hearing, petitioner, on the morning of December 19, 1958, served and filed a memorandum and indicated a position on what portions of the documents are relevant by proffering photostatic reproductions of excerpts from the documents. In the memorandum, the petitioner

... withdraws all objections and requests the Board to make available to the Respondent the record of prior statements to the Federal Bureau of Investigation by Budenz touching upon the subject matter of his testimony concerning the Starobin letter and the Weiner-Childs conversation including everything which is conceivably demandable under 18 U.S.C. 3500 subject to appropriate excisions by the Board.

The documents submitted December 12, 1958, by petitioner are, respectively, (a) A Federal Bureau of Investigation inter-office memorandum dated June 7, 1946, (b) a Federal Bureau of Investigation inter-office memorandum dated February 7, 1947, and, attached thereto, 18260 a "series of summaries of information," (c) a Federal Bureau of Investigation inter-office letter dated March 4, 1947, and (d) a Federal Bureau of Investigation inter-office memorandum dated August 2, 1950. The Board has inspected and reviewed each of these documents.

It is clear that petitioner's memorandum of this date makes unnecessary a hearing to determine whether relevant portions of the documents should be turned over to respondent and moots our order of December 17, 1958, requiring the calling of the authors of the documents for this purpose. Those portions of the documents which the Board finds to relate to the Starobin letter and the Weiner conversation will be turned over to respondent. In order to do so, a hearing will be convened as set forth below, at which time counsel will be heard on any matters felt pertinent. Accordingly, it is

ORDERED that the Board's order issued December 17, 1958, should be and the same is hereby vacated; and it is further

ORDERED that a hearing will be held on Monday, December 22, 1958, commencing at 10:00 A. M. in Board Hearing Room 113, Lafayette Building, Washington, D. C., for the purpose of turning pertinent excerpts over to respondent and hearing counsel.

By the Board (Members Donegan and Cherry not participating, the latter due to absence).

(SEAL) (Signed) DOROTHY McCULLOUGH LEE  
Dorothy McCullough Lee  
Chairman

December 19, 1958  
Washington, D. C.

18267

Filed Dec. 29, 1958

IN THE SUBVERSIVE ACTIVITIES CONTROL BOARD

**Respondent's Supplemental Motion to Reopen Hearing and Motion for the Production of Documents**

In view of the contents of the FBI office memoranda and intra-Bureau letter produced to respondent on December 22, 1958, respondent withdraws its motion of November 26, 1958 to reopen the hearing for the purpose of adducing evidence that Budenz did not at any time or in any form relate to the FBI the alleged incidents concerning the Starobin letter and the Childs-Weiner conversation to which he testified in this proceeding.

However, it appears from these documents that Budenz gave the FBI several versions of the Starobin letter and the Childs-Weiner conversation which (a) are self-contradictory, (b) contradict the statements made by him in the

December, 1945 recorded interview, and (c) contradict his testimony in this proceeding. Respondent therefore moves to reopen the hearing for the purpose of calling as witnesses the FBI agents who were the authors of the office memoranda and intra-Bureau letter and examining them with reference to the following:

1. The whereabouts of the contemporaneous handwritten notes or typewritten transcriptions thereof, if any, made by the FBI agents who interviewed Budenz, recording the statements attributed to him in the FBI office memoranda and intra-Bureau letter.

18268 2. The date of the interview with Budenz referred to in the office memorandum of June 7, 1946.

3. Which of the statements by Budenz reported in the office memorandum of February 7, 1947 were made by him in December, 1945 and which of such statements were made by him in April 1946.

4. Whether the FBI agents who conducted the interviews referred to in the office memoranda and intra-Bureau letter questioned Budenz concerning the contradictions and inconsistencies between the statements contained in the recorded interview of December 1945 and the several and mutually contradictory versions of the Starobin letter and the Childs-Weiner conversation reported in the office memoranda and intra-Bureau letter.

5. Whether agents of the FBI who had knowledge of Budenz' prior statements relating to the Starobin letter and the Childs-Weiner conversation knew of Budenz' testimony concerning the two alleged incidents at or about the time it was given in this proceeding.

Testimony by agents of the FBI on the foregoing matters is relevant and material to the following issues: (a) Whether Budenz' testimony in this proceeding with reference to the alleged Starobin letter and Childs-Weiner conversation was false; (b) whether, if false, it was known

by the FBI to be false; and (c) whether all of Budenz' testimony in this proceeding should be stricken as tainted.

Respondent also moves to reopen the hearing for the following additional purposes:

1. To introduce in evidence the excerpts produced to it on December 22, 1958, and to make the unexcerpted documents part of the formal record.

2. To examine all FBI agents having knowledge of the facts to ascertain whether or not petitioner has now produced all memoranda, letters, reports and other documents containing, reporting or purporting to summarize 18269 oral or written statements by Budenz relating to the alleged incidents of the Starobin letter and the Childs-Weiner conversation.

Respondent further moves for the production to it of the unexecised recording of the Budenz interview with the FBI of December, 1945, the unexecised office memoranda dated June 7, 1946, February 7, 1947 and August 2, 1950 and the unexecised intra-Bureau letter dated March 4, 1947. The grounds for this motion are that the provisions of 18 U.S.C. 3500 for the excision of documents are inapplicable or, if applicable, are unconstitutional.

Respondent also moves that the Board require the production of all statements in the possession of the petitioner made by all of petitioner's witnesses on any matters to which their testimony in this proceeding relates. The grounds for this motion are that the hearing panel denied respondent's requests for production of certain witnesses' statements on the erroneous basis that respondent was not entitled to statements made by petitioner's witnesses, at least unless it first showed a contradiction between the testimony and the statements. (See, e. g., Tr. 1092-3, 1208, 12069-76.) Respondent's counsel were not obliged to continue to make fruitless motions for statements when the panel had established a principle of denying production.

In this section see the questions presented in *Rubin v. U. S., Supreme Court, No. 437, Oct. Term 1958, cert. granted December 8, 1958.*

18290

SUBVERSIVE ACTIVITIES CONTROL BOARD

\* \* \* \* \*

**Memorandum Opinion and Order**

We have for consideration at this time respondent's supplemental motion to reopen the hearing in this remand proceeding and motion for the production of additional documents, both contained in the same document filed December 29, 1958. The Recommended Decision of the hearing member was issued on September 19, 1958, and arguments on exceptions thereto heard on October 22, 1958. Petitioner thereafter on November 13, 1958, moved for leave to file a supplemental affidavit with the Board because of the contentions made by respondent in argument on exceptions to the effect that petitioner had not, as previously ordered by the Court of Appeals and by the Board, produced all statements of the witness Budenz relating to the Starobin letter or the Weiner conversation, and had made no representation that this had been done.

The supplemental affidavit of Francis X. Worthington was lodged with the Board on November 21, 1958, accompanied by handwritten notes taken by FBI agents at interviews with Budenz in December 1945, which were submitted for the Board's *in camera* inspection, with petitioner taking the position they were merely fragmentary jottings and not producible to respondent.<sup>1</sup> On November 26, 1958, respondent

<sup>1</sup> On their face, these notes were taken at interviews on December 6, 7, 10 and 12, 1945, and our *in camera* inspection of the notes confirms petitioner's representations that they are mere fragmentary jottings, and not conceivably substantially verbatim and they are therefore not producible to respondent. Also, these notes, except for those dated December 6, cover

ent filed objections to the supplemental affidavit and a motion to reopen the hearing (which it later supplemented on December 8, 1958) for the purpose of establishing through the testimony of FBI agents who interviewed Budenz that Budenz did not at any time or in any form relate to the FBI the alleged incidents concerning the Starobin letter and the Weiner conversation to which he had testified at the original hearing, and further to establish that Budenz' testimony concerning these incidents was a fabrication.

By memorandum and order of December 3, 1958, the supplemental affidavit was accepted for filing and for the reasons set forth in that memorandum the Board therein ordered petitioner to produce for its *in camera* inspection all documents, etc., in petitioner's possession relating to communications by Budenz to the FBI concerning the Starobin and Weiner incidents for appropriate Board determination as to whether any such documents were "statements." Petitioner thereafter requested and was granted an extension of time in which to comply with the Board's order of December 3, 1958, and on December 12, 1958, submitted for the Board's *in camera* inspection four documents consisting of FBI inter-office memoranda dated June 7, 1946, August 2, 1950, and February 7, 1947 (the latter being a cover memorandum with attached summaries), and an internal FBI letter dated March 4, 1947. Petitioner took the position that these documents were not "statements," as defined in 18 U.S.C. 3500 and therefore not producible to respondent.

On December 17, 1958, the Board ordered petitioner to produce the authors of the relevant portions of the above-described documents to assist it in determining whether

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the so called December 1945 interviews which were recorded on discs, verbatim extracts of which have been produced to respondent and received in evidence as Communist Party Exhibits 97, 98, 99A, 99B, 100 and 101. The above supplemental affidavit of Mr. Worthington is hereby designated Board Exhibit 4A and the notes will be sealed in the record as Bor 1 Exhibit 5.



these pertinent portions constituted "statements" within the guides afforded by 18 U.S.C. 3500. By memorandum filed December 19, 1958, petitioner withdrew its objections to giving respondent the relevant portions of the above-described documents and requested the Board to make the appropriate excisions and to make available to respondent the relevant extracts.

18292 On December 22 and 23, 1958, the relevant excerpts of the four documents were turned over to counsel for respondent, and respondent was given until December 29, 1958, to file an appropriate memorandum in the light thereof. On that date respondent filed the aforementioned supplemental motion to reopen the hearing and motion for production of documents, which we rule upon herein. In view of the documents received December 22, 1958, respondent in this motion withdrew its motion of November 26, 1958, to reopen the hearing for the purpose of adducing evidence that Budenz had never related to the FBI the incidents concerning the Starobin letter and the Weiner conversation.

In its supplemental motion to reopen the hearing, respondent contends that the documents produced to it reveal that Budenz gave the FBI several versions of the Starobin and Weiner incidents which were self-contradictory and which contradict his testimony in this proceeding. Respondent seeks to reopen the hearing and to examine the FBI agents who were authors of these documents for the purposes of (1) determining the existence and whereabouts of contemporaneous handwritten notes or transcriptions thereof recording statements attributed to Budenz in these documents; (2) determining the date of the interview with Budenz referred to in the office memorandum of June 7, 1946; (3) ascertaining which of the statements by Budenz contained in the summaries of information covered by office memorandum dated February 7, 1947, were made by him in December 1945 and which

were made by him in April 1946; (4) determining whether the interviewing agents questioned Budenz concerning alleged contradictions and inconsistencies in his statements about the Starobin and Weiner incidents; (5) ascertaining whether agents of the FBI had knowledge of Budenz' prior statements concerning the two incidents at or about the time he gave his testimony at the original hearing in this proceeding; (6) introducing into evidence the excerpts produced to it on December 22, 1958, and making the unexcerpted documents part of the formal record; and (7) examining all FBI agents having knowledge of the facts to ascertain whether or not petitioner has produced all matters relating to the Starobin and Weiner incidents.

Further, respondent moves for the production to it of the unexcised recordings of the Budenz interview with the FBI in December 1945, the unexcised office memoranda dated June 7, 1946; February 7, 1947, and August 2, 1950, and the unexcised intra-Bureau letter dated March 4, 1947, on the grounds that the provisions of 18 U.S.C. 3500 for the excision of documents are inapplicable to Board proceedings, or, if applicable, are unconstitutional. Respondent also moves the Board to require production of all statements in the possession of the petitioner made by all of petitioner's witnesses on any matters to which their testimony in this proceeding relates on the ground 18293 that the hearing panel had erroneously established a principle of denying production to respondent unless it first showed a contradiction between the testimony of the witnesses and the statements sought to be produced, and that therefore respondent's counsel were not obliged to continue to make fruitless motions for production.

Petitioner on January 7, 1959, replied to respondent's supplemental motion to reopen and its motion for production of documents, taking the position that the motions should be denied, except in one particular noted below. Petitioner represents, in response to point (1) above of

the motion to reopen, that it has produced everything which is conceivably demandable, including the only handwritten notes of FBI agents which are extant of relevant interviews with Budenz, and represents that other notes in this connection have been destroyed and if they or typewritten transcriptions thereof were in existence, they would have been produced. As to the date of the interview with Budenz referred to in the office memorandum of June 7, 1946, set forth above in point (2) of respondent's motion, petitioner points out that the document itself states that the interview was "recent" and represents the date to have been May 22, 1946, but contends this fact is hardly material.

Concerning point (3) above of respondent's motion, petitioner states that all portions of the summaries of information covered by office memorandum of February 7, 1947, relate to statements made by Budenz in December 1945 and that a separate memorandum which covers the April 1946 interview referred to in the office memorandum will be submitted to the Board upon request for its *in camera* inspection and will reveal that nothing in that interview related to the Starobin or Weiner incidents.<sup>2</sup>

18294 In reply to points (4) and (5) of respondent's motion, petitioner contends that it is patent from the documents produced that the FBI agents did not question Budenz concerning any alleged inconsistencies in his

<sup>2</sup> The Board on January 8, 1959, directed petitioner to submit the proffered memorandum of the April 1946 interview, and this was done the following day. On January 12, 1959, respondent tendered an answer (which is hereby filed) to petitioner's reply to its supplemental motion stating that a comparison of pages 4 and 13 of the summaries of information which accompanied the February 7, 1947, inter-office memorandum furnished to it on December 22, 23, 1958, when compared with an excerpt from the disc recorded interview with Budenz on December 7, 1945, (Communist Party Exhibit 99B), showed material in the former which was lacking in the latter and that therefore it was reasonable to infer that either all relevant memoranda and records of the 1945 interviews have not been produced or that petitioner's representation that the summaries attached to the February 7, 1947, memorandum refers solely to interviews in December 1945, is incorrect.

versions of the two subject incidents because if they had done so, this matter would be related in these documents. Further, petitioner asserts that whether agents of the FBI knew of Budenz' testimony in this proceeding, is irrelevant to the issue of Budenz' credibility. It is petitioner's position that in view of Budenz' unavailability he cannot now be confronted and hence testimony of agents should not be received to impeach him.

Concerning leave to introduce into evidence the excerpts produced to respondent on December 22, 1958, as requested in point (6) above, and to make the unexcerpted documents from which they were taken part of the record, petitioner interposes no objection. As to respondent's request (point (7) above) to examine FBI agents to ascertain if petitioner has produced all material called for by the Court and the Board, petitioner submits that its representations that all such material has been produced should be accepted.

In opposition to respondent's motion to produce the unexcised recordings and documents, petitioner contends that this is merely a fishing expedition which goes far beyond the scope of the remand and is an attempt to disregard the clarification order of June 16, 1958, of the Court of Appeals which limited production to statements relating to the Starobin and Weiner incidents. Further, petitioner represents that it has produced to the Board all documents conceivably demandable within the meaning of 18 U.S.C. 3500 and has fully complied with the mandate of the Court of Appeals. Moreover, it contends that the Board is not the proper forum to determine the constitutionality of 18 U.S.C. 3500.

In opposing respondent's demand for all statements by all of petitioner's witnesses touching upon their testimony in this proceeding, petitioner points out that this is beyond the scope of the remand and is controlled by the language in the Court's clarifying order dated June 16,

1958, wherein it states: "... the Party could not in subsequent ancillary proceedings make new demands for further material for cross-examination." Petitioner further points out that the Court of Appeals in its opinion in this proceeding dated January 9, 1958, (254 F. 2d 314), and its order dated April 11, 1958, considered similar blanket demands by respondent for production of statements of petitioner's witnesses, and denied them.

Preliminarily, we might state that due to the posture of this proceeding when Budenz' unavailability was established at the hearing the Board has sought to proceed with the Court's remand instructions as far as practicable, given the unavailability of the witness.<sup>3</sup>

We accept petitioner's unequivocal representation that all Budenz documents or other recordings relating to the Starobin letter and the Weiner conversation in petitioner's possession (see, e.g., petitioner's response, pp. 6-7, to the instant supplemental motion) have been submitted to the Board and we are of the view that, with the exception that the parties will be given opportunity for final argument and to move documents into evidence, the Board has pursued the production question as far as it can reasonably do so under the circumstances of unavailability of the witness. After the argument set below, the Board will reach a final determination on the Budenz question.

We have considered the various grounds of respondent's pending motions and except as noted hereafter find them

<sup>3</sup> After petitioner produced to respondent, as excused by the hearing member, the disc recorded statements of Budenz to the FBI, request was made for the recall of Budenz for further cross-examination. Thereupon at the hearing on August 7, 1958, counsel for petitioner presented a physician's letter indicating the unavailability of Budenz by reason of a grave heart condition (Board Exhibit 3C). Subsequent independent investigation directed by the hearing member confirmed the condition of Budenz' health and it was agreed by the parties that Budenz could neither testify at the hearing, nor give testimony by deposition, nor by interrogatories.

to be without merit. The Court previously ruled specifically on the limits of its remand concerning Budenz and we see no supervening circumstances warranting an expansion in order to comply with the spirit of the remand. Respondent's efforts to expand the Court's instructions are without merit. We feel that, given the witness' unavailability for testimony, respondent has been granted as full an exploration of the question as is practicable and equitable.

The Board is of the further view that petitioner's representations in responding to respondent's motions on the factual details as to dates, etc., are sufficient for respondent's purposes. Our *in camera* inspection of the proffered memorandum of the April 1946 interview shows that it does not relate to the two subject matters under inquiry. This document is sealed in the record as Board Exhibit 6. The unexcised office memoranda of June 7, 1946, August 2, 1950, and February 7, 1947, and the letter of March 4, 1947, are sealed in the record as Board Exhibit 7.

Respondent's attack on the applicability of the excision provisions of 18 U.S.C. 3500 and their constitutionality is not meritorious. The excision by the Board, after *in camera* inspection, of irrelevant portions of documents, follows prevailing judicial procedure and such procedure was recognized by the Court of Appeals in its opinion of January 9, 1958, in this proceeding (254 F. 2d 314, 329). The constitutional attack on those provisions is not, in any event, a question for Board determination.

Accordingly, it is

ORDERED that respondent's motion filed November 26, 1958, as supplemented on December 8, 1958, to reopen the hearing, is considered withdrawn and respondent's motions filed December 29, 1958, are hereby denied, except insofar as the motions go to an opportunity to move into evidence



as exhibits the documents furnished to respondent on December 22 and 23, 1958, and it is further

ORDERED that the hearing in this proceeding will convene on January 19, 1959, at 10:00 A.M. in the Board's hearing room (113), Lafayette Building, 811 Vermont Avenue, N. W., Washington, D. C., to afford respondent the opportunity to offer in evidence the above-described documents and to hear such further argument as the parties may desire to make concerning the question of Budenz' credibility and other matters deemed pertinent. Arguments shall be limited to forty-five minutes for each side.

By the Board (Member Donegan not participating).

(SEAL)

DOROTHY McCULLOUGH LEE  
Dorothy McCullough Lee  
*Chairman*

January 13, 1959  
Washington, D. C.

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## C. P. Exhibit 95

May 28, 1958

## MARY STALCUP MARKWARD

From March 31, 1943, to January 24, 1958, Mary Stalcup Markward has been paid a total of \$26,160.95.

## MARY STALCUP MARKWARD

DATE	PURPOSE FOR WHICH MADE	AMOUNT
1943		
March 31	For information furnished	\$ 3.00
April 14	For literature & information: no breakdown	6.00
April 21	For information furnished	5.00
April 28	For information furnished	7.00
May 5	For information furnished	8.00
May 12	For information furnished	10.00
May 19	For information furnished	5.00
May 26	For information furnished	10.00
June 2	For information furnished	2.00
June 9	For information furnished	10.00
June 16	For information furnished	8.00
June 23	For information furnished	3.00
June 30	For information furnished	8.00
July 7	For information furnished	10.00
July 14	For information furnished	10.00
July 21	For information furnished	15.00
July 28	For information furnished	10.00
August 5	For information furnished	10.00
August 11	For information furnished	15.00
August 18	For information furnished	4.95
August 25	For information furnished	15.00
September 1	For information furnished	15.00
September 8	For information furnished	15.00
September 15	For information furnished	15.00
September 22	For expenses: 4 tickets to Elizabeth Gurley Flynn mass meeting of the Communist Party to be held 10/1/43 at Press Club Auditorium, Washington, D. C.	2.00
September 22	For information furnished	15.00
September 29	For information furnished	15.00
October 6	For information furnished	15.00
October 13	For information furnished	15.00
October 20	For information furnished	15.00
October 27	For information furnished	18.00
November 3	For information furnished	20.00
November 10	For information furnished	20.00
November 19	For information furnished	20.00
November 24	For information furnished	25.00
December 1	For information furnished	20.00
December 8	For information furnished	20.00
December 15	For information furnished	25.00
December 22	For information furnished	25.00
December 29	For information furnished	20.00
<b>TOTAL 1943</b>		<b>\$ 509.95</b>

## MARY STALCUP MARKWARD (continued)

DATE	PURPOSE FOR WHICH MADE	AMOUNT
1944		
January 5	For information furnished	20.00
January 12	For information furnished	25.00
January 19	For information furnished	25.00
January 26	For information furnished	25.00
February 2	For information furnished	25.00
February 9	For information furnished	25.00
February 16	For information furnished	30.00
February 23	For information furnished	25.00
March 1	For information furnished	25.00
March 8	For information furnished	30.00
March 15	For information furnished	25.00
March 22	For information furnished	30.00
March 29	For information furnished	25.00
April 5	For information furnished	30.00
April 12	For information furnished	30.00
April 19	For information furnished	35.00
April 26	For information furnished	35.00
May 3	For information furnished	35.00
May 10	For information furnished	25.00
May 17	To obtain information	25.00
May 31	For information furnished	50.00
June 7	For services rendered	30.00
June 14	For services rendered	30.00
June 21	For information furnished	35.00
June 28	For information furnished	35.00
July 5	For services rendered	35.00
July 12	For services & information furnished: no breakdown	35.00
July 19	For services & information furnished: no breakdown	35.00
July 26	For services & information furnished: no breakdown	35.00
August 2	For information furnished	35.00
August 9	For services rendered	35.00
August 23	For services rendered	70.00
August 30	For expenses: trip to New York City & attendance at The Jefferson School during the week beginning 8/13/44: no itemization	50.00
August 30	For information furnished	35.00
September 6	For information & services rendered: no breakdown	35.00
September 13	For information furnished	35.00
September 20	For information furnished & services: no breakdown	35.00
September 27	For information furnished	35.00
October 4	For information furnished	35.00
October 11	For information furnished	35.00
October 18	For information furnished	38.00
October 25	For information furnished	35.00
November 1	For information furnished	35.00
November 8	For information furnished	35.00
November 15	For information furnished	35.00
November 22	For information furnished	35.00
November 29	For information furnished	35.00
December 6	For information furnished	35.00
December 13	For information furnished	35.00
December 20	For information furnished	38.00
December 27	For information & services rendered: no breakdown	35.00

TOTAL 1944

\$1,696.00

## MARY STALCUP MARKWARD (continued)

DATE	PURPOSE FOR WHICH MADE	AMOUNT
1945		
January 3	For information furnished	\$ 40.00
January 10	For information furnished	40.00
January 17	For information furnished	40.00
January 24	For information furnished	40.00
January 31	For information furnished	40.00
February 7	For information furnished	40.00
February 14	For information furnished	40.00
February 21	For information furnished	40.00
February 28	For information furnished	40.00
March 7	For information furnished	40.00
March 14	For information furnished	40.00
March 21	For information furnished	40.00
March 28	For information furnished	40.00
April 4	For information furnished	40.00
April 11	For information furnished	45.00
April 20	For information furnished	40.00
May 3	For information furnished	80.00
May 11	For information furnished	40.00
May 16	For information furnished	40.00
May 25	For information furnished	45.00
June 1	For information furnished	40.00
June 8	For information & services rendered: no breakdown	45.00
June 15	For information & services rendered: no breakdown	45.00
June 22	For information & services rendered: no breakdown	45.00
June 29	For information & services rendered: no breakdown	45.00
July 6	For information & services rendered: no breakdown	45.00
July 13	For information & services rendered: no breakdown	45.00
July 24	For information & services rendered: no breakdown	45.00
July 27	For information & services rendered: no breakdown	45.00
August 9	For information & services rendered: no breakdown	45.00
August 9	For information & services rendered: no breakdown	45.00
August 27	For information & services rendered: no breakdown	45.00
August 27	For information & services rendered: no breakdown	45.00
September 7	For information & services rendered: no breakdown	45.00
September 7	For information & services rendered: no breakdown	45.00
September 7	For information furnished	60.00
September 14	For information & services rendered: no breakdown	45.00
September 25	For information & services rendered: no breakdown	90.00
October 5	For information & services rendered: no breakdown	45.00
October 12	For information & services rendered: no breakdown	45.00
October 19	For information & services rendered: no breakdown	45.00
October 24	For information & services rendered: no breakdown	50.00
November 2	For information & services rendered: no breakdown	50.00
November 9	For information & services rendered: no breakdown	50.00
November 16	For information & services rendered: no breakdown	90.00
November 23	For information & services rendered: no breakdown	90.00
November 30	For information & services rendered: no breakdown	100.00
December 11	For information & services rendered: no breakdown	90.00
December 14	For information & services rendered: no breakdown	90.00
December 21	For information & services rendered: no breakdown	100.00
December 28	For information & services rendered: no breakdown	100.00

TOTAL 1945

\$2,660.00

## MARY STALCUP MARKWARD (continued)

DATE	PURPOSE FOR WHICH MADE	AMOUNT
1946		
January 5	For information & services rendered: no breakdown	\$ 90.00
January 10	For information & services rendered: no breakdown	90.00
January 21	For information & services rendered: no breakdown	90.00
January 28	For information & services rendered: no breakdown	90.00
February 8	For information & services rendered: no breakdown	90.00
February 15	For information & services rendered: no breakdown	90.00
February 25	For information & services rendered: no breakdown	90.00
March 1	For information & services rendered: no breakdown	90.00
March 8	For information & services rendered: no breakdown	100.00
March 15	For information & services rendered: no breakdown	90.00
March 22	For information & services rendered: no breakdown	90.00
March 29	For information & services rendered: no breakdown	90.00
April 5	For information & services rendered: no breakdown	90.00
April 17	For information & services rendered: no breakdown	180.00
April 29	For information & services rendered: no breakdown	180.00
May 15	For information & services rendered: no breakdown	180.00
May 27	For information & services rendered: no breakdown	180.00
June 15	For information & services rendered: no breakdown	270.00
July 12	For information & services rendered: no breakdown	90.00
July 24	For information & services rendered: no breakdown	180.00
August 5	For information & services rendered: no breakdown	180.00
August 16	For information & services rendered: no breakdown	100.00
August 28	For information & services rendered: no breakdown	180.00
September 13	For information & services rendered: no breakdown	180.00
September 27	For information & services rendered: no breakdown	270.00
October 9	For information & services rendered: no breakdown	90.00
October 21	For information & services rendered: no breakdown	180.00
November 4	For information & services rendered: no breakdown	180.00
November 22	For information & services rendered: no breakdown	270.00
December 11	For information & services rendered: no breakdown	180.00
December 23	For information & services rendered: no breakdown	200.00
TOTAL 1946		<u>\$4,450.00</u>
1947		
January 6	For information & services rendered: no breakdown	\$ 135.00
January 22	For information & services rendered: no breakdown	270.00
February 10	For information & services rendered: no breakdown	270.00
February 17	For information & services rendered: no breakdown	90.00
March 7	For information & services rendered: no breakdown	180.00
March 24	For information & services rendered: no breakdown	270.00
April 8	For information & services rendered: no breakdown	180.00
April 24	For information & services rendered: no breakdown	180.00
May 15	For information & services rendered: no breakdown	270.00
June 10	For information & services rendered: no breakdown	360.00
July 17	For information & services rendered: no breakdown	360.00
August 14	For information & services rendered: no breakdown	400.00
August 22	For information & services rendered: no breakdown	180.00
September 9	For information & services rendered: no breakdown	270.00
October 2	For information & services rendered: no breakdown	270.00
October 16	For information & services rendered: no breakdown	180.00
October 30	For information & services rendered: no breakdown	180.00
November 13	For information & services rendered: no breakdown	180.00
November 25	For information furnished	180.00
December 11	For information & services rendered: no breakdown	180.00
December 30	For information furnished	300.00
TOTAL 1947		<u>\$4,885.00</u>

## MARY STALCUP MARKWARD (continued)

DATE		PURPOSE FOR WHICH MADE	AMOUNT
1948			
January	15	For information & services rendered: no breakdown	\$ 180.00
January	27	For information & services rendered: no breakdown	180.00
February	3	For information & services rendered: no breakdown	90.00
February	17	For information & services rendered: no breakdown	180.00
March	1	For information & services rendered: no breakdown	90.00
March	10	For information & services rendered: no breakdown	180.00
March	17	For information & services rendered: no breakdown	90.00
April	5	For information & services rendered: no breakdown	180.00
April	13	For information & services rendered: no breakdown	180.00
April	22	For information & services rendered: no breakdown	90.00
May	4	For information & services rendered: no breakdown	180.00
May	11	For information & services rendered: no breakdown	90.00
May	27	For information & services rendered: no breakdown	180.00
June	9	For information & services rendered: no breakdown	180.00
June	22	For information & services rendered: no breakdown	180.00
June	29	For information & services rendered: no breakdown	90.00
July	8	For information & services rendered: no breakdown	90.00
July	19	For information & services rendered: no breakdown	200.00
August	6	For information furnished	180.00
August	17	For information & services rendered: no breakdown	180.00
August	30	For information & services rendered: no breakdown	180.00
September	14	For information & services rendered: no breakdown	180.00
September	28	For information & services rendered: no breakdown	180.00
October	12	For information & services rendered: no breakdown	180.00
October	26	For information & services rendered: no breakdown	180.00
November	9	For information & services rendered: no breakdown	180.00
November	23	For information & services rendered: no breakdown	180.00
December	7	For information & services rendered: no breakdown	180.00
December	21	For information & services rendered: no breakdown	200.00*

TOTAL 1948

\$4,630.00

\* In a previous tabulation this payment was shown as \$175.50. The correct amount is \$200.00.

1949

January	4	For information & services rendered: no breakdown	\$ 180.00
January	18	For information & services rendered: no breakdown	180.00
February	1	For information & services rendered: no breakdown	180.00
February	15	For services rendered	180.00
March	1	For information & services rendered: no breakdown	200.00
March	15	For information & services rendered: no breakdown	200.00
March	29	For information furnished	200.00
April	12	For information & services rendered: no breakdown	200.00
April	26	For information & services rendered: no breakdown	200.00
May	10	For information furnished	200.00
May	26	For information and assistance furnished: no breakdown	200.00
June	7	For information and assistance furnished: no breakdown	200.00
June	21	For information & services performed: no breakdown	200.00
July	12	For information & assistance: no breakdown	180.00
July	28	For information & services rendered: no breakdown	150.00
August	16	For information & services rendered: no breakdown	150.00
September	6	For information & services rendered: no breakdown	225.00
September	22	For information & services rendered: no breakdown	150.00
October	6	For information & services rendered: no breakdown	150.00
October	24	For information & services rendered: no breakdown	100.00
November	8	For information & services rendered: no breakdown	150.00
December	13	For information furnished	100.00

TOTAL 1949

\$3,875.00



## MARY STALCUP MARKWARD (continued)

DATE	PURPOSE FOR WHICH MADE	AMOUNT
<b>1950</b>		
February 24	For information furnished	\$ 100.00
April 10	For information received & services rendered: no breakdown	100.00
June 16	For information & services: no breakdown	100.00
October 23	For information furnished	50.00
November 28	For information furnished	50.00
December 21	For information & research being performed: no breakdown	50.00
<b>TOTAL 1950</b>		<u>\$ 450.00</u>
<b>1951</b>		
January 9	For information furnished	\$ 50.00
February 27	For information & services: no breakdown	50.00
May 22	For information & services: no breakdown	50.00
June 22	For services	50.00
July 27	For services	50.00
September 4	For services	50.00
October 6	For services & information furnished: no breakdown	50.00
October 10	For travel & incidental expenses for trip to New York City at request of U. S. attorney: no itemization	45.00
November 9	For services rendered	50.00
December 20	For services & information: no breakdown	50.00
<b>TOTAL 1951</b>		<u>\$ 495.00</u>
<b>1952</b>		
January 24	For services & information: no breakdown	\$ 50.00
February 27	Expenses for trip to New York City for pre-trial inter- view with U. S. attorney: no itemization	50.00
March 3	For services	50.00
April 14	For services & information: no breakdown	50.00
June 9	For services & information: no breakdown	100.00
July 15	For services & information: no breakdown	50.00
August 22	For services	50.00
December 22	For services	100.00
<b>TOTAL 1952</b>		<u>\$ 500.00</u>
<b>1953</b>		
January 6	For services	\$ 45.00
March 6	For services	95.00
April 27	For services & information: no breakdown	70.00
June 24	For services & information: no breakdown	80.00
August 25	For services & information: no breakdown	90.00
October 15	For services & information: no breakdown	70.00
December 23	For services & information: no breakdown	100.00
December 23	For information furnished	5.00
<b>TOTAL 1953</b>		<u>\$ 555.00</u>

## MARY STALCUP MARKWARD (continued)

DATE	PURPOSE FOR WHICH MADE	AMOUNT
<u>1954</u>		
February 26	For information received & services rendered: no breakdown	\$ 60.00
May 10	For information received & services rendered: no breakdown	75.00
May 28	For information received & services rendered: no breakdown	30.00
July 2	For information received & services rendered: no breakdown	50.00
July 30	For information received, services rendered, and expenses incurred: no breakdown	40.00
September 27	For information received, services rendered, and expenses incurred: no breakdown	80.00
November 22	For information received, services rendered, and expenses incurred: no breakdown	90.00
December 23	For information received, services rendered, and expenses incurred: no breakdown	40.00
TOTAL 1954		<u>\$ 465.00</u>
<u>1955</u>		
February 10	For information received, services rendered, and expenses incurred: no breakdown	\$ 70.00
April 15	For information received, services rendered, and expenses incurred: no breakdown	90.00
June 16	For information received and services rendered: no breakdown	90.00
August 22	For services rendered	80.00
October 18	For services rendered	80.00
TOTAL 1955		<u>\$ 410.00</u>
<u>1956</u>		
January 19	For services rendered	\$ 90.00
March 21	For services rendered	80.00
June 13	For services rendered	120.00
September 14	For information received & services rendered: no breakdown	120.00
December 13	For services rendered	80.00
TOTAL 1956		<u>\$ 490.00</u>
<u>1957</u>		
February 20	For information received	\$ 40.00
June 19	For services	30.00
TOTAL 1957		<u>\$ 70.00</u>
<u>1958</u>		
January 24	For services rendered	\$ 20.00
TOTAL 1958		<u>\$ 20.00</u>

**C. P. Exhibit 96**

Saturday, March 19, 1949

There was a practice meeting of the leadership of the Communist Party of Maryland and D. C. under conditions which they expect to have to follow with the passage of the Ober Bill in Maryland. Sealed orders were given to group leaders who were not to open them until a designated time on Saturday evening. Groups were given a time and place where they were expected to meet and were instructed not to wait more than 5 minutes for anyone who was late. There was a schedule worked out at which time each group was supposed to enter the meeting hall. Members came in groups of 4 or 5 at about 5 minute intervals. My group entered the hall at 2101 Callow avenue Baltimore, Md. at 7:37 p.m. Group leaders were instructed to turn in their instructions to Phil Frankfeld. 3 leaders failed to do this stating that the orders were destroyed. It was stated that written orders would not be given in the future. Two groups were criticised because one came 5 minutes late and one approximately 5 minutes early. Phil Frankfeld chaired the meeting and called it a meeting of the Interracial Cultural Society. He stated that in the future that the Interracial Cultural society might meet in swanky hotels etc. He stated that every word said in the hall must be free to be printed on the front page of the Baltimore Sun. However he constantly referred to instructions and suggestions from our friends on the Ninth floor etc. There was some concern over the fact that there was a car parked across the street with a man and a woman in it. There was some indecision as to whether the meeting should be held at all under such circumstances. It was decided to continue with the meeting only after Howie Seaman went out and reported that the car had left. there was self criticism on the part of Washington members who had arrived in Baltimore too early and had gone to Pennsylvania Station to eat.

Phil Frankfeld criticised himself for having gone through with a meeting of the Baltimore leadership on the previous Thursday at his home. He stated that there had been 8 FBI cars waiting outside of his home and they had followed the leading people from his home to their own homes.

There was a decision that no leading body in the District will meet in groups larger than 3 in the future. This includes club executive committee meetings as well as all committees commissions etc. Clubs will meet in groups not larger than 5 and in many cases in groups of 3. They were instructed not to meet in the homes of leading Communists but to seek out other places. It was suggested that the more public places were perhaps the best. Restaurants were suggested also the possibility of meeting in automobiles and riding around while carrying on discussions. All of this was previously discussed with the friends on the ninth floor according to Phil Frankfeld. Phil Frankfeld also suggested the greatest vigilance in the ranks. He stated that there would be no hesitancy to remove those in leadership who were not carrying out their assignments, particularly in regard to Mass work. At this stage he stated that we are struggling to save Bourgeois democracy. He mentioned that it would probably be necessary to remove a member from Cumberland who was on the District Committee (The only Cumberland member on the District Committee is Boyd Coleman) Members are to be called friend or brother in the future not Comrade. The question of replacing Elsie Smith and Herb Kransdorf was referred to the District Board. Phil Frankfeld stated that 8 people were being considered for these vacancies. Those selected will not be announced publicly.

Phil Frankfeld discussed the passage of the Ober Bill under the light of the need to work to secure necessary signatures to have the bill put to referendum in November 1950. He cited the greatest need to involve the broad-

est group of people in the referendum drive on the grounds that the rights of labor, the jews, negroes, even the Catholic church were at stake. He stated that 10,000 signatures were needed to put the law to referendum and that only 5,000 could be gotten in Baltimore, City. 5,000 of these must be gotten by June 1st. It was felt that some aspects of the law would go into effect before the referendum even with the required signatures. The legal aspect as applied to this has not been studied out as yet. The goal is to get 25,000 signatures so the petitions for referendum will in themselves be a mass protest.

Phil Frankfeld spoke on the Statement of Foster and Dennis. He said there had been some discussion in Baltimore as to its correctness. Phil stated that the statement was correct, timely, and necessary. That it would have been a desertion for the U. S. Communists to omit making such a statement after the statement or similar ones had been made by other Communist leaders throughout the world. Rob Hall spoke on the 'timely' by stating that the call for peace was the thing which gave leadership to the CPUSA and the thing which made it different. He said that without this our program for higher wages, etc. was no different than the program of many people and organizations. A vote was taken stating that the members were in agreement with the statement and also the statement made by Phil Frankfeld to the press in which he stated his agreement. The members also voted on the fact that the statement was Timely and Necessary. Everyone in the room voted in the affirmative by a hand vote with the exception of Artie who is chairman of the white-collar section (in Baltimore) He abstained.

Immediately when Artie abstained a furore arose and the abstention was called unsatisfactory on the part of a comrade in such a leading position. Finally it was resolved that a discussion would take place between Artie and Phil within a week and that Artie would be removed if he did not see his way clear to agree with the statement.

It was stated that there would probably not be such a large meeting called in the future. Socials can be held if they are held under broad auspices.

Washington will not begin to function entirely in the group system at present but will make its system ready for operation at any time.

There were approximately 50 members present. 49 chairs were filled and a few more brought in. There was only indication that two members who had been notified were absent. Sally Peek from Washington was one and the other was from Baltimore. Members identified were: Rob Hall, Isador Pascoff, Charles Payne, Mary Stalcup, Roy Wood, Robert Paul, Rose Clinton, Julius Kaplan, William Johnson, Henry Thomas. Phil Frankfeld, George Meyers, Dorothy Blumberg, Ruth Fox, Sam Fox, Sam Gordon, Lil (Balto.), Jeannette Fino, Esvend Jones, George Jones, Milt Neuman, Maurice Braverman, Arthur (Cumberland), Howie (Seaman), Bill Wood, Artie (W. C. Chairman), Garland Winkler, Sally Winkler, Herb Hall, Mary Smith, Irving Randel.

It was decided that disciplinary measures would be taken in any instance where the telephone was used in reference to Party work.

Clubs and members were urged to lay in supplies of paper hectographs and other supplies to use during the emergency.

### C. P. Exhibit 97

#### EXCERPT FROM BUDENZ RECORD NO. 6

Q. Now we'll get on to whatever you want to talk about.

A. . . . Well I'd say, of course, during the time I was in Chicago I was here in New York once a month on National Committee meetings or something else. The Record was in terrible condition. I had to come here and try to raise money all the time.



**C. P. Exhibit 98****EXCERPT FROM BUDENZ RECORD No. 8**

Q. What, in your opinion, is the basis for Browder's original collaborationist policy? A. Well, that is very clear. He and I had a number of discussions on it. I don't want you to think I was detached from these people, in fact Browder and I used to go to lunch very frequently;—well, I mean off and on. His position was very definitely that Communism was not going to extend in Europe at the present time, and that there would be maybe an intermediate government,—that it was necessary that therefore the Soviet Union and the United States work together. He looked at it from the viewpoint of the Soviet Union, too (few unintelligible words) but at any rate that it have a long period of reconstruction—and that in Europe there was not to be the swing toward Communist that a lot of people expected. He said that many times (few unintelligible words) but that being the case the United States and the Soviet Union should work together, that the people wanted peace and this was the way to harmonize the two relationships and work out what would be good for the Soviet Union and for the United States.

**C. P. Exhibit 99A****EXCERPT FROM BUDENZ RECORD No. 10**

Q. Now this collaborationist policy (few unintelligible words) this tactic continued on through the November 1944 election, continued on through the rest of the winter and spring of 1945, and apparently it continued up to the time when the San Francisco conference was convened. In fact up until about the second week of the conference when we voted to allow Argentina to enter and at the same time we excluded the Lublin Poles. Is that when the policy ended?

**C. P. Exhibit 99B****EXCERPT FROM BUDENZ RECORD No. 10**

Q. Is that when the policy ended? A. Well, whether that was the time or not, it was in San Francisco that a great deal of the—ah—I mean when, when it was clear from the—you see Fields and Starobin were in San Francisco, and it was clear from their dispatches—from their private communications sent from Starobin to us, which were very lengthy and disturbed, that we were already attacking the United States and that was pretty early, I should say. I don't know whether it was when Argentina came up. It may have been advance information as to the discussions about it, you see, but at any rate I remember these long reports that came by airmail special delivery and some were even in wire form, various of these reports, but most of them were by air mail special delivery.

Q. Now, Starobin isn't a big enough man, we certainly feel, to establish that change in policy? A. Oh no, no, no. In fact he isn't even well thought of as a foreign editor today. He's considered to have too many personal slants, you know. He's very conscious of the fact that he's a Polish Jew—he said that—he's that type, that is, very subjective. Without a doubt he's not very highly regarded—I mean—I don't mean as a person—but as a foreign editor.

Q. Do you think then that the instructions relative to this change of policy that Starobin and Fields must have received came from the Russian delegation? Oh, you said maybe Manuilsky, the Ukrainian delegate? A. Sure, sure, I mean—after all, they got the atmosphere there. In fact I mentioned Mannilsky very much, because definitely he is a figure in the CI.

Q. He certainly is. A. He used to lay down the law like a general, you know, to his troops. He was there as the Ukrainian President or something.

## C. P. Exhibit 100

## EXCERPTS FROM BUDENZ RECORD NO. 16

A. Now, I'll tell you what I thought I'd do, if you don't mind, make a little summary of my own for you of some things, I mean you indicated some subjects—now, for instance, on finances—I have just been trying to wonder how I could help you on that. You see we did have financial problems, we had them at both the "Daily Worker" and the "Middlewest Daily Record" but in most of those cases, so as far as I can see, there's nothing there that's of any very great interest as far as I can see. Of course, you'll appreciate that finances can be concealed very rapidly, from me who was supposed to supervise it—I mean to say, the way we raised money for things—we [laughter] the way the money was raised for things is through the districts,—I think you know the general way of raising money—through the districts and naturally, you could put in 5,000 there and nobody could tell. I couldn't check it, I mean where it came from when it comes from the districts. All money raised in these financial drives comes from the districts but I do know that when you add the financial drive money up and the money from ads and the money from returns, it looks fairly legitimate, at least on the papers. The only question would be there about the way that these funds come in on the drives . . . you know—how the districts handle it. Now, that I don't know anything about. In regard to the supervision of funds—Oh—the "Middlewest Daily Record" I did tell Father Rowan once that I wished that I could see some of that Moscow money. I mean that, I was very sincere. I was so pressed there we went to the wall that I was trying to get some money very desperately. What did happen though, we did get some money for that paper from the National Office. Now, of course, where this money from the National Office comes, I have no particular means of knowing except the general reports given to the National Committee every so

often—Mostly once a year which generally are published, by the way. So they don't tell much, you know.

Q. Have you ever seen any indication of funds coming from Russia or Soviet sources? A. The only indication would be is that in addition to Krumbein as Treasurer, Weiner still maintains a certain general supervisory control over finances.

Q. Weiner as well as Krumbein? A. That's right. Weiner acts something like Chairman of the Finance Committee. Now you know, he formerly was Treasurer until he got into technical difficulties and if anything would happen it would happen along that line. You see, there's no doubt that he's trusted financially as well as Krumbein. I mean Krumbein is treasurer and acts on the job and all that, but certainly Weiner has to be in on all big decisions. If you are going to make a big move for money from the National Office or anything like that, Weiner has to be consulted. Now, he doesn't sit in regularly, for example, on the financial committee of the paper or anything like that. If you want to,—if for instance, we do—I'll tell you—on the paper itself, we generally have a fairly legitimate looking situation as far as I can see. For example, when we are short of money, we have to borrow on that machinery downstairs. We generally borrow from the Metropolitan News Company—they're the credit corporation.

Q. Which company? A. Metropolitan News Company. You know that—they mortgage the presses, you see.

Q. The Party, too, furnishes you money? A. Oh, I was going to say—they raise the big money. That's where the only possibility would be, see. That's where I could never tell. I have regular financial sheets submitted to me all the time and signed checks and did a lot of things as President—but certainly everything looked all right. Only I had no reason to check on the districts you understand what I mean, I couldn't do it alone.

Q. Was there any reverse flow of funds from the "Worker" to the Party? A. No, except in this way.

That somebody might be put on the payroll awhile. It was always legitimate in the sense of these people working for the paper, to a certain extent giving it advice. Do you understand?

Q. I see. A. But I have no recollection of money flowing to the paper. Now, of course, certain loans are made. There may be loans too from the IWO and the unions, that I'm not quite sure. You know—. I should say that if there is any money that comes from abroad—I don't know whether it is necessary, to tell you the truth, at least not for the publications, they get along pretty well.

Q. From a business standpoint, is the Daily Worker a going proposition? A. No. It is if you count this financial drive every year.

Q. I see. A. You see, that is the only place, they would be able to insert funds. For instance, if the New York District raises—it may be that takes place, I wouldn't want you to put this down because this is such a smelly thing. Sometimes I suspected that because the New York District raises such a tremendous—of course, that is natural anyway—New York and the waterfront leads the nation. That is not suspicious in itself, but you see there is no way for a person like myself to check on those funds of the district. No way, under the sun—I mean, even if I tried to, I'd have to have an accountant with me. It would have to be—.

Q. Who paid you as Business Editor? A. As Managing Editor..

Q. Yes. A. Oh, the Daily—the Freedom of the Press Corporation, of which I was President.

Q. The Freedom of the Press Corporation pays all of the employees of the Daily Worker? A. Oh, yes.

Q. And if the Freedom of the Press Corp. gets in the hole financially, it will either get a loan [unintelligible] or will get money from the headquarters of the Party. A. Well, there may be a loan from an individual. I just can't recall any right now but this Heller is very active about that. You know, A. A. Heller.

Q. I don't know, I don't think he's got so much money has he, he's got some? A. Well, he has some money, I know that. He's got money but he's rather active on that sort of thing, and he will give money, loan money, when they're in need, and there are a few people of that type who looked as though they have money. See? Now the only thing that I think is indicative is Weiner's position because I can't see any reason, never did, for Weiner's being a sort of a super, ahhh—that's just surmise, you understand. You must be very careful on that. But I can't see why he's a super financial person. See, unless there's something.

#### C. P. Exhibit 101

#### EXCERPT FROM BUDENZ RECORD No. 42

Q. Are there, to your knowledge, any foreign or Soviet funds available in this country to a particular known Communist or otherwise which can be used for the purpose of assisting the Party? A. No. None that I know of—very definitely.

#### C. P. Exhibit 102

Office Memorandum

● United States Government

June 7, 1946

Louis Budenz

Incidental to the information furnished me by Budenz in the course of my recent contact with him in South Bend, he furnished the following information which will be of interest to the Security Division.

• • • • •  
In discussing the question of the Communist line, particularly its international aspects, Budenz stated that the following are the chief sources of information for the Party in this country, which sources are utilized frequently and pursued completely without variation:



New Times

Pravda

Izvestia

The Bulletin of the Embassy of the USSR

Stalin's speeches

Statements by Dimitrov

Statements by Manuïlski

In addition, Budenz stated that he and his associates on the staff of the Daily Worker frequently had recourse to the New York Times which publishes daily "Items of Interest", emanating from such sources in the Soviet Union as Pravda, Izvestia, Stalin, Molotov, etc.

. . . . .

When I inquired of Budenz as to the media utilized by the Soviets in getting messages to this country concerning any alteration in the plan, line, or in general international Communist policies, he, in addition to referring to the sources mentioned above, described the following incident which will serve to throw some light on this question.

Budenz recalled that within a few days after the United Nations Conference on International Organization was convened at San Francisco, the Communist Party in this country reversed its policy completely with regard to the question of supporting the United States. Budenz advised that this reversal in policy, as evidenced so completely in the Daily Worker, was predicated upon receipt of a lengthy letter which was addressed to Budenz at Party Headquarters in New York City by Joseph Starobin, who was then representing the Daily Worker at UNCIO in San Francisco. In this letter, which was considered so highly confidential that Budenz was not permitted to retain it in his office overnight, Starobin advised that "the French comrades have the line and the support of the Soviet Union—and the French comrades blasted Stettinius and the United States Delegation, and therefore Starobin directed that the Party in this country should immediately

blast Stettinius and the United States Delegation." Budenz stated that in this letter Starobin inferred that he and/or his associates at the Conference had conferred with Manuiski regarding this question, and that the changed policy was predicated upon Manuiski's instructions as well as on advice received from French Communists at UNCIO.

On the question of Soviet funds, Budenz stated that he could recall only one instance wherein it was indicated that the Soviet Union might be sending money to the United States for the purpose of furthering the efforts of the Communists in disseminating propaganda. This instance occurred when Budenz was affiliated with the Daily Record, Communist organ in Chicago, Illinois. Budenz stated that his newspaper in Chicago was in extremely poor financial condition; that he went to New York to discuss the matter with Communist officials; that he met with Maurice Childs and William Weiner, on which occasion Childs said to Weiner, "Don't you soon expect a consignment from across the sea?" Weiner immediately changed the subject matter, indicating that he did not want to discuss the question of transmission of Soviet funds in the presence of Budenz, even though Budenz was a trusted Communist. Budenz concluded from the remark that was made that funds were actually being sent to this country at that time by the Soviet Union for propaganda purposes.

#### C. P. Exhibit 103

Office Memorandum

United States Government

Date: August 2, 1950

Budenz was interviewed at his home in Crestwood, New York, on July 13, 1950 in regard to CP, USA—Funds by SA.

In regard to the transmission of funds between Russia, including the satellite countries, and the CP, USA, Budenz advised that he has no direct knowledge of such transmissions. However, he stated that he has always been under the impression that there was such transmissions as the Party needed much more money to carry on its operations than it could possibly raise from dues and its various fund drives.

In this connection reference is made to Bureau letter dated June 2, 1950 instructing to question Budenz regarding a "secret or conspiratorial fund", mentioned in his book "Men Without Faces", and operated by William Weiner and William Browder. Budenz stated that the terms "conspiratorial fund" and "secret fund" are his own terminology. Budenz advised that he had once been informed by William Browder that large sums of money was maintained in bank accounts for Party operations and that Browder had told him this money, at times, totalled a million dollars. Budenz doesn't know if this money was available to the Party, being held in reserve for Moscow or earmarked for various Communist organizations. He stated that this fund was operated by Browder, William Weiner, Lemuel Harris and Jack Childs. Further, that while he was in the Party, particularly during the time he was editor of the Mid-West Daily Record, in Chicago, he had a conversation with Weiner and Mort Childs, CP officials in Chicago at the time, in regard to funds and Childs asked that funds be advanced him by Weiner from the reserve fund and Weiner advised that he didn't have any at that time as his communication system had temporarily broken down. Budenz took this to mean that Weiner's source of supply was from foreign countries, particularly Russia.

## C. P. Exhibit 104

Office Memorandum

United States Government

Date: February 7, 1947

Luis F. Budenz

Attached are the original, two carbons, and a yellow of a series of summaries of information furnished to the Bureau by Mr. Louis F. Budenz in December, 1945, and in April, 1946.

Budenz stated that in addition to his being Managing Editor of the "Daily Worker," he was President of the Freedom of the Press Corporation. The Freedom of the Press Corporation paid the employees of the "Daily Worker." He said that when the Freedom of the Press was in bad straits financially on occasions a loan would be obtained from an individual. He referred to one of these individuals as being Abraham Heller whom he thought to have money available. In connection with finances for the "Daily Worker," Budenz seemed to stress the position that William Weiner appeared to be a "super finance person"

In referring to the collaboration of policy which existed for approximately a year and a half between the Communist Party and the Administration and that collaboration's demise in 1945, Budenz referred to the attack made on the United States along with Great Britain in its stand taken at the UNO, particularly with regard to the Lublin Polish Delegation and the Argentine Delegation. He said that Joseph Starobin and Frederick Vanderbilt Field were representing the "Daily Worker" at the United Nations Conference in San Francisco and that they had sent back a communication to the "Daily Worker" which indicated the concern over this stand on the part of the United States Delegation. Budenz interpreted the communication as meaning that they had been in contact with Soviet repre-

sentatives, mainly Dmitri Manuilsky. Manuilsky, it is to be recalled, an official Soviet Delegate, was most antagonistic over the American stand. He said that the Political Committee of the Communist Party interpreted the entire situation as meaning that it was necessary to send letters and telegrams of protest to the American Delegation demanding that they adhere to the policies of Roosevelt.

\* \* \* \* \*

Budenz went on to state that he had lunch frequently with Browder and that from these luncheons he gathered that Browder's position was that very definitely Communism was not going to extend in Europe at the present time and that there would be an intermediate type of government in the various countries. Therefore, it was necessary that the Soviet Union and the United States work together. Budenz explained, however, that Browder retained the viewpoint of the Soviet Union. He also said that Browder had commented that there would be a long period of reconstruction in Europe at which time there would not be a swing toward Communism as a lot of people expected. According to Budenz, he made that observation on many occasions and further that Browder observed the United States and the Soviet Union should work together since the people wanted peace and ~~this was the way to~~ harmonize relationships and to work out what would be good for both the United States and the Soviet Union.

\* \* \* \* \*

Budenz stated that the collaborationist policy continued until the United Nations Organization Conference in San Francisco. He said then he learned that it was clear from private communications sent to Stachel by Frederick Vanderbilt Field and Joseph Starobin that the Communist Party was already attacking the United States. (This was in all probability April of 1945). Budenz said it may have been advance information, referring to the Duclos article, but Starobin was not a big enough man to establish a change in policy. Budenz said that he felt that instruc-

tions as to the change in policy may have come from Dmitri Manuilsky, who was an official delegate at the Conference and who, Budenz said, was to be recalled as a "figure" in the Communist International.

• • • • •  
 With regard to financing the "Daily Worker," Budenz stated that it had financial problems. The "ninth floor" (Communist Party National Headquarters) was supposed to supervise the methods of raising funds. He said he could not determine whether money came from the Districts or from other sources with the exception of the "Daily Worker" fund drives. He said he had no indication of any "Moscow money" being given to the Communist Party or to the "Daily Worker."

He said when they needed money desperately, they would get money from the National Office but that he had no means of knowing how the National Office of the Communist Party got the money other than what was said in reports published on behalf of the National Committee.

With regard to the Treasurer of the Communist Party, he said that Krumbein was the Treasurer although William Weiner maintained a general supervisory control over finances, acting something like a Chairman of the Finance Committee. Budenz said that Weiner formerly was Treasurer until he got into technical difficulty (passport fraud). He said that Weiner had to be in on all of the big decisions and that if one had to make a "big move" for money from the National Office or anything, Weiner had to be consulted. He pointed out that Weiner did not act regularly.

As regards the "Daily Worker's" funds, he said that when it was short of money, they obtained a loan, offering as security the printing machinery. The borrowing was usually done from the Metropolitan News Company.

Budenz said that there was no reverse flow of funds from the "Daily Worker" to the Communist Party although "somebody might be put on the pay roll for a while." He said it was always legal in the sense that these people



working for the paper to a certain extent gave it advice. Budenz stated that there were loans from the International Workers Order and certain unidentified unions although he was not quite sure as to the latter. He described the "Daily Worker" as "not a going proposition," but for the fact that the financial drives raised the additional funds.

. . . . .

Budenz stated that he got the impression that on occasions big loans were made to the Communist Party by the International Workers Order. He said he had no knowledge as to foreign or Soviet funds available to the Party.

**C. P. Exhibit 105**

March 4, 1947

Re: Louis F. Budenz

Dear Sir:

Confidential Informant ND 402 was interviewed February 26, 1947 on two questions relative to the Communist Party, USA—Brief.

. . . . .

Confidential Informant ND 402 recalled that back in 1939 or thereabout, when the Informant was connected with the Mid-west Daily Record, the Communist Party newspaper in the Mid-west, Childs was on the National Committee and was the District Organizer in the Mid-west, and was also probably on the Political Committee. The Daily Record was in a bad financial condition at the time and both Childs and Confidential Informant ND 402 were anxious to save it. They had a meeting with William Weiner, who controls the finances of the Party, in a restaurant in New York City. Childs suggested that Weiner try to get some money from Moscow to finance the paper. Weiner stated that he had temporarily lost his contacts in Moscow, hence, he could not do anything. Confidential Informant ND 402 stated that prior to Childs requesting Weiner to aid the

paper, the paper had been given fifty thousand dollars. Confidential Informant ND 402 did not know where this money came from.

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**A. G. Exhibit 500**

[CPA members, exclusive of WC, as of 10-25-44]

.....  
Moss, Annie Lee—72 R St. S. W.

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**A. G. Exhibit 502**

Partial List of Members  
North East Branch Communist Party

.....  
19. Moss, Anna Lee—72 R St. S. W. (Pentagon)

Feb 15 1944

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**A. G. Exhibit 504**

August 21, 1944

The composition of the Communist Political Association of Washington is largely as follows: (this analysis is not altogether a rigid one however most of the people were classified into the group they best fitted).

.....  
Unassigned

.....  
Anna Lee Moss

**A. G. Exhibit 505**

**Recruits**

45. Book No. —; Slip Returned —; Name and Address: Annie Moss; Sex: F; Color: N; Age: 37; Occupation: Cafeteria; Union: CIO; Recruited by: —; Branch: —; Initiation Pd: ☒; Branch Assigned to: NE; Date Assigned: —; Date Reported to District: 3/28.

**A. G. Exhibit 506**

Unless otherwise specified address is NW  
Dues are for month shown thru June  
Club Subs are due for month shown etc.

Name: Moss, Anna Lee; Address: 72 R St Sw; Old Bk #: 55149; New Bk #: —; Dues: April; Club Sub: Jan; Remarks—

**A. G. Exhibit 509**

Old Record Stanton Park Club Communist Party.  
January—June 1944

Record of Attendance and Dues Payments Book

These records shall be kept by the Membership Director,  
or by the Branch Financial Secretary.

Record of Attendance and Dues Payments

Moss, Annie Lee—Government

**A. G. Exhibit 510****Membership Record Communist Political Asso.  
July—Dec 1944****Record of Attendance and Dues Payments**

Name or Initials: Moss, A. L.; Book Number: 55149;  
 Transferred: In club, Out sub; January: Attendance  
 1SF — 2 —, Dues 30; February: Attendance 1SF —  
 2 —, Dues 30; March: Attendance 1SF — 2 —, Dues  
 30; April: Attendance 1SF — 2 CS, Dues, 10; May:  
 Attendance 1 — 2 —

**A. G. Exhibit 511****Membership Record Frederick Douglas Club  
Communist Party.  
Jan-June 1944****Record of Attendance and Dues Payments Book**

These records shall be kept by the Membership Director,  
 or by the Branch Financial Secretary.

**Record of Attendance and Dues Payments**

13. Name or Initials: Moss, Annie Lee; Book Number:  
 53395; Transferred: In —, Out —; July: Attendance  
 1 — 2 —, Dues 25; August: Attendance 1 — 2 —,  
 Dues 25.

[fol. 2375]

**BEFORE**  
**SUBVERSIVE ACTIVITIES CONTROL BOARD**

Docket No. 51-101

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**WILLIAM P. ROGERS, JR., Attorney General**  
**of the United States, Petitioner,**

—v.—

**THE COMMUNIST PARTY OF THE UNITED STATES**  
**OF AMERICA, Respondent.**

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**Oran H. Waterman, Francis X. Worthington, Lafayette**  
**E. Broome, Joseph M. Wysolmerski, and James L. Weldon,**  
**Jr., for petitioner.**

**John J. Abt and Joseph Forer for respondent.**

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**Modified Report of the Board on Second Remand—**  
**February 9, 1959**

[File endorsement omitted]

This case is before us on remand pursuant to the judgment of the United States Court of Appeals for the District of Columbia Circuit upon review of our Modified Report issued December 18, 1956.<sup>1</sup> In its decision issued January 9, 1958 (254 F. 2d 314), the Court remanded for the production to respondent of reports by the witness Markward to the Federal Bureau of Investigation.<sup>2</sup> By a subsequent ruling issued April 11, 1958, on respondent's petition for rehearing and accompanying motions, and clarification of its ruling issued June 16, 1958, the scope of the remand was enlarged by the Court to include the production of "statements" (as defined in 18 U.S.C. 3500) in the possession of the Government given by the witness Budenz to the FBI on two of the subjects about which he had testified in the original hearing before this Board.

Hearings for the purpose of producing the documents required by the Court's orders took place before Board Member Francis A. Cherry. On September 19, 1958, a Recommended Decision was issued which proposed the striking of certain of Budenz' testimony and, after reevaluation of the credibility of witnesses Markward and Budenz and reexamination of the evidence, recommended that the Board make certain modifications in its Modified Report and reaffirm its determination that the Communist Party is a Communist-action organization as defined in the Internal Security Act of 1950. Written exceptions to

<sup>1</sup> In the Modified Report we had set forth our determinations after reconsideration pursuant to an earlier remand by the Supreme Court under section 14(a) of the statute. See *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115.

<sup>2</sup> The Court also found that references to Attorney General Exhibit 484, appearing on folios 2499 and 2595 of the Modified Report, should be stricken. We do so and have removed this exhibit from our consideration (see Appendix). Upon reappraisal of the evidence, absent this exhibit, no alteration in the Board's findings is indicated.<sup>3</sup> Additionally, review of the record reveals that a reference to Attorney General Exhibit 481 quoted at folio 2550 of the Modified Report should likewise be stricken (see Appendix). As this exhibit was cumulative in effect, its deletion does not affect the remainder of the Board's findings.



the Recommended Decision were filed by the Communist Party on October 8, 1958, and a memorandum in answer thereto was filed by petitioner on October 21, 1958. Oral argument on exceptions was heard by the Board the next day.

While we had the case under advisement, petitioner filed a motion, the effect of which was to request that the Board stay its final decision pending the filing of a supplemental affidavit, which later was filed on November 21, 1958. As a result of this affidavit further proceedings ensued, with final argument taking place on January 19, 1959.

[fol. 2379] We set forth below the issues presented during this remand proceeding not heretofore resolved by Board ruling, as well as the considerations and rulings resulting from a reconsideration of the entire record. In so doing, we take into account the recent Recommended Decision of Member Cherry and the exceptions and arguments directed thereto.

We shall consider first the issues relating to the witness Markward, then the issues relating to the witness Budenz, and, lastly, other matters raised by respondent by way of exceptions. Except as otherwise indicated herein or obviated by our findings, respondent's exceptions are deemed to be without merit and are overruled.

All changes in, or deletions from, the Modified Report, including minor changes of a clerical type, are set forth in the Appendix hereto. A copy of the Modified Report containing these changes and marked with appropriate black brackets, and the word "STRICKEN" stamped over the text, to show all matters deleted is also appended to this Report.

#### - THE WITNESS MARKWARD

The Court directed that the Board order the Attorney General to produce (1) Markward's reports to the FBI and her testimony in a Defense Department security hearing involving one Annie Lee Moss; (2) Markward's report to the FBI concerning the Frankfeld matter; and (3) records of Markward's compensation from the FBI. On the basis of the record, during the second remand respondent moved to strike all of Markward's testimony. This

was denied by the Member-Examiner in his ruling of August 25, 1958, and respondent excepts thereto. Each of these matters will be discussed seriatim. Pertinent background on these questions appears in the Court's opinion (254 F. 2d 314, 326-330) and except where necessary this history will not be repeated here.

Concerning the Moss question, in conformity with the orders of the Court of Appeals, Markward's FBI reports concerning Moss, being 13 in number, were produced to respondent at the reopened hearing, as was Markward's testimony concerning Moss in the Defense Department security hearing. Markward was recalled for further cross-examination and cross-examined by respondent's counsel on other matters but not concerning the Moss question, e.g., witness Markward's identification of an Annie Lee Moss as a onetime Party member.<sup>3</sup>

[fol. 2380] Thereafter, upon offer by petitioner, Markward's FBI reports concerning Moss, the majority being copies of actual Communist Party records such as club and branch attendance and membership and dues rosters, were received in evidence (A.G. Exs. 499 to 511, inc.). Similarly, a copy of the pertinent Markward testimony in the Moss Security Hearing was received in evidence (A.G. Ex. 498-A).

During the prior remand proceeding, the Board, after inspecting the security hearing transcript *in camera*, ruled that respondent's assertion that witness Markward testified falsely in the Moss proceeding and was disbelieved in that proceeding was not supported. In view of the respondent's failure to conduct cross-examination on the Moss question, the instant remand proceeding has added factually for the Board's consideration only the 13 FBI documents produced.

The Member-Examiner concluded that the documents produced to respondent corroborate Markward and show

<sup>3</sup> There was no testimony by Markward concerning Moss at the original hearing. The Moss question was introduced into the record by respondent's motions made to the Court and the Board during the first remand (to which were attached affidavits) charging that Markward had perjured herself in the Defense Department security hearing.

the Party's perjury charge against her on the Moss matter to be baseless. Respondent excepts to this conclusion on the grounds that—

4. (a) the non-production of the decisions of the Security Board and the Defense Department in the Moss matter and the rulings preventing respondent from exploring the Defense Department's action, precluded respondent from showing that the Defense Department had disbelieved Markward's testimony regarding Mrs. Moss and the reasons for such disbelief; and (b) the documents relied on for the finding were not competent evidence.

Regarding the decision of the Security Board, the Court of Appeals previously ruled specifically that respondent was not entitled to it (Order of Court of Appeals issued June 16, 1958).<sup>4</sup> As to the decision of the Defense Department (as distinguished from its Security Board), under the Court's ruling respondent would be no more entitled to it than the Security Board's decision. The fact is, however, that there is in evidence a letter from the Secretary of Defense to the Secretary of the Army which relates the decision of the Secretary of Defense and the reasons for it (A.G. Ex. 497).

We see no merit to the remaining exception that Markward's reports to the FBI (A.G. Exs. 499 to 511, inc.) and her testimony in the Moss Security Hearing (A.G. Ex. 498-A) are not competent evidence. Though it did not [fol. 2381] cross-examine Markward on the Moss question respondent sought, nevertheless, to leave her credibility under serious attack. Under those circumstances, the documents were admissible though offered by petitioner, who proffered the witness.

The situation that has resulted on the Annie Lee Moss question is that copies of the Communist Party's own records, the authenticity of which the Party has at no time disputed, were produced to it (A.G. Exs. 499 to 511, inc.)

<sup>4</sup> Respondent acknowledged at oral argument before the Board that any quarrel on this point must be with the Court and not the Board in view of the Court's prior ruling on the point.

and show that one Annie Lee Moss, 72 R Street, S. W., Washington, D. C., was a Party member in the mid-1940's. Yet, on several occasions before the Court of Appeals and the Board the Party charged that witness Markward had committed perjury before the Defense Department in the Moss Security Hearing in testifying to what the Party's own records showed to be the fact.

We conclude that upon production of the documents demanded by respondent, the Communist Party's charge that Markward gave perjurious testimony was not substantiated. Consequently, Mrs. Markward's credibility is in no way impaired by the Annie Lee Moss matter.

Turning to the Frankfeld question, the Court, in its opinion of January 9, 1958, ordered produced to respondent the report made by the witness Markward to the FBI concerning a Party meeting in Baltimore, Maryland, where according to her testimony, Party leader Frankfeld made a statement to the effect that Party members would not bear arms against the Soviet Union. As the Court noted in its opinion (254 F. 2d at p. 327), the Board, in assaying Markward's credibility during the earlier remand proceeding, had inspected this FBI report *in camera* and had concluded that it afforded no basis for a finding of perjury (Mod. Rept., fol. 2409).

During the instant remand, respondent did not cross-examine Markward concerning the contents of her report but asked questions which dealt mainly with its identification and the method and manner in which she made reports to the FBI. Though the witness was not later confronted with the contents of the report as an inconsistent statement, the report was proffered by respondent and received in evidence without objection. (C.P. Ex. 96.) In assaying Markward's credibility in the light of the report, it is necessary to take into consideration certain other documents about which Markward testified at the original hearing and which pertain to the Frankfeld statement.<sup>5</sup>

<sup>5</sup> As stated in *Wigmore on Evidence*, 3d Ed., § 1040, p. 725, "inconsistency is to be determined, not by individual words or phrases alone, but by the *whole impression or effect* of what has been said or done [citing cases]."

[fol. 2382] The March 1, 1949, issue of *For a Lasting Peace For a People's Democracy* (A.G. Ex. 333) contained a statement of Maurice Thorez, then General Secretary of the Communist Party of France, made in answer to the query: "What would you do if the Red Army occupied Paris?" wherein he said that the Soviet Union "can never be an aggressor" but, "if under such conditions the Soviet Army . . . were forced to enter our territory, could the working people and the entire people of France conduct themselves any differently in relation to the Soviet Army than the working people and peoples of Poland, Rumania, Yugoslavia had done?" Thereafter, *For a Lasting Peace For a People's Democracy* of March 15, 1949 (A.G. Ex. 334) carried a number of excerpts from comments on the Thorez statement made by leaders of Communist Parties in countries throughout the world with a blocked caption reading as follows:

The statement made by Maurice Thorez, General Secretary of the Communist Party of France, about the attitude of the working class and working people of France in the event of aggression against the Soviet Union and the New Democracies has been echoed by the Communist Parties and working people of the capitalist countries. Millions have voiced their determination to frustrate the plans of the Anglo-American warmongers and to defend the bulwark of peace—the Soviet Union and the countries of People's Democracy. \* \* \* Similar statements were made by the Communist Parties of the United States . . . and other countries. (Emphasis supplied.)

Such a statement by Foster and Dennis, leaders of the Communist Party of the United States, was published in the *Daily Worker* of March 3, 1949 (A.G. Ex. 331) which Markward had read prior to attending the meeting on March 18, 1949, where the Frankfeld statement in question was made. The *Daily Worker* in an italicized lead paragraph significantly emphasized the gist of the Foster-Dennis statement as follows:

William Z. Foster and Eugene Dennis, Chairman and General Secretary of the Communist Party, yes-



terday declared that, in the event Wall Street succeeded in starting a new world war, despite the efforts of peace forces to prevent it, American Communists would oppose such "*an unjust, aggressive, imperialist war*" and would work "*with all democratic forces*" to bring that war to an end. (Emphasis supplied.)

[fol. 2383] The Frankfeld statement in question was made, according to Markward, at a Party meeting in Baltimore where a prior statement that he had made to the *Baltimore Sun* newspaper commenting on the Foster-Dennis statement was also discussed. Excerpts from the Frankfeld statement made in answer to an inquiry from the *Baltimore Sun* are set forth in *The Worker* for March 13, 1949 (A.G. Ex. 332) which Markward had read. As reported in that exhibit, Frankfeld announced "that Communist Party members in this country would oppose Wall Street's plans to embroil this country in any war of aggression and would 'co-operate with all democratic forces to defeat the predatory war aims of American imperialism and bring such a war to a speedy conclusion on the basis of a democratic peace.'"

At the original hearing Markward first testified that "The chief topic of discussion at that meeting [the Baltimore meeting] was the question of the statement which had been made by Thorez . . . that the Communist Party members of France would not bear arms against the Soviet Union. *This was the essence of what the statement was.*" (Emphasis supplied.) (J.A. 744.) She further testified that Eugene Dennis and William Foster joined in a similar statement and that Phil Frankfeld had made a statement to the *Baltimore Sun* along the same line stating that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union.

Under cross-examination at the original hearing, Markward was asked where A.G. Ex. 331, containing the Foster-Dennis statement, and A.G. Ex. 332, containing the excerpts from the Frankfeld statement to the *Baltimore Sun*, contained any assertion that Communists would not bear arms in any war between the Soviet Union and the United States.



She testified that those words in that form are not in these statements but explained that the references therein defining such a war as an unjust war, and stating that it would be opposed and that Communists would not take part in such a war is the manner in which these exhibits convey what she interpreted to mean that Communists would not bear arms against the Soviet Union. She admitted, however, that her recollection was confused on the actual wording of what Frankfeld had said to the *Baltimore Sun* but testified that Frankfeld had made the statement concerning the bearing of arms in the meeting where a discussion of the statement he had made to the *Baltimore Sun* had taken place.

Markward's FBI report thus became germane because she was asked if she had made a report in writing concerning what Mr. Frankfeld had declared on this issue at the meeting, and she testified, "I reported the discussion which took place at this meeting, which did contain the essence of what I had to say about not participating in a war with the Soviet Union." (Emphasis supplied.) (S.J.A. 2275.) Markward's report to the FBI (C.P. Ex. 96) does not contain any specific mention that Frankfeld had stated Party members would not bear arms against the Soviet [fol. 2384] Union in the event of war with the United States. The report does show, however, that at the meeting Frankfeld discussed the statements previously made by Foster and Dennis and his own prior statement to the *Baltimore Sun*, and the report contains the comment that Frankfeld said, "it would have been a desertion for the U.S. Communists to omit making such a statement after the statement or similar ones had been made by other Communist leaders throughout the world." (C.P. Ex. 96.)

The Board did not rely upon Markward's testimony concerning the Frankfeld statement in the Modified Report because of its conclusory nature and the imprecision therein exposed by cross-examination at the original hearing. There having been no cross-examination on the produced document for our consideration, we see no reason to alter our evaluation on this point and her testimony on the so-called Frankfeld statement therefore remains uncredited. This is not to say, however, that Markward's interpretation

of these statements is deliberate fabrication. The evidence in this record and the findings of the Board set out in other sections of the Modified Report pertaining to "just" and "unjust" wars and the so-called "forces of peace" and "People's Democracies", show that no other rational interpretation, from the Communist viewpoint, would be warranted concerning the Thorez, Foster-Dennis, and Frankfeld statements than that given by Markward on what the essence of these statements was. Moreover, Markward testified as to the essence of these statements.

Turning now to the issue of Markward's compensation from the FBI, Markward testified on direct examination at the original hearing that she was not paid a salary; that she received contributions to the expense of the work she was doing which included reimbursement for expenses such as paying dues, making contributions, buying literature, and other types of expenses, including those for transportation. Under cross-examination at the original hearing she testified that she volunteered her services to the FBI without remuneration of any kind and that no formal financial arrangements were made; that she at no time ever submitted a statement for expenses to the FBI; and that, through periodic meetings with agents, the FBI had an idea of what she was doing and it was at its initiative that she was given money. She gave receipts for the money received, but was unable to recall any specific amounts of money she received for any specific year or for the entire period of her activity from the year 1943 to 1949. She could not be more specific than to say that she received irregular amounts at irregular times.

Pursuant to the direction of the Court of Appeals (254 F. 2d 314, 329-330), the records of Markward's compensation from the FBI were produced to respondent, and during the instant remand proceeding Markward was subjected to extensive cross-examination on this matter. The compensation records were received in evidence (C.P. Ex. [fol. 2385] 95). In summary, this exhibit shows that the FBI accounted for payments to Markward for the period 1943 through 1949 on a weekly or semi-monthly basis, and that from 1950 to 1958 payments were docketed generally on a monthly or a bi-monthly basis with occasional lapses

in regularity. The majority of single payments made at the frequency and over the period just indicated were in amounts of \$30, \$40, \$50, \$90, \$100, \$180, and \$200.

Under cross-examination at the hearing on the instant remand, Markward disputed that she actually received money regularly on a weekly or semi-monthly basis at a given rate such as \$40 or \$90 a week over a given period of time. She explained the increase in payments in the latter part of 1945 from \$45 per week to \$90 per week as occurring during the time she resigned her job as a hairdresser and devoted her entire time to Communist Party activity. She did not dispute that she received the total amounts of money indicated in C.P. Ex. 95 and stated that she assumes from the exhibit that the FBI made payments to her according to some rate but that she had no knowledge of this and had no arrangements for payment. She stated she was paid either in cash or the money was deposited to her checking account but she was unable to recall receiving any specific payments at any specific times, such as a single payment totaling \$400 made in August of 1947.

Markward further explained under cross-examination what she considered as items of expenses and it is clear that the witness' concept of that term does not coincide with the FBI's use of the term in its accounting records. For example, in C.P. Ex. 95 there are several years when no entries whatsoever for expenses are made, yet obviously Markward must have had some expenses, under the ordinary business connotation of that term, during those years in performing her function as an informant. On the other hand, it is apparent that, taking the most generous estimate of what Markward herself considered as expenses, she received substantial payments for services in excess of what her expenses would be.

Taking fully into account the Member-Examiner's findings concerning Markward's demeanor and all of her testimony, we find that her direct testimony concerning receipt of compensation from the FBI is not acceptable and this is considered in evaluating her credibility.

Respondent in its exception 7 distorts the Recommended Decision wherein it asserts that the Member-Examiner

found that reliance on Markward's testimony in the Modified Report should not be disturbed because it is a minor factor in this proceeding. We do not so read the Recommended Decision. In any event, the Board does not conclude that because her testimony is a minor factor it should be credited. The fact remains, however, that findings based upon her testimony are minimal; and the effect of her entire testimony upon the Board's Modified Report is inconsequential. (See Mod. Rept., fol. 2409, fn. 5.)

Turning now to the cumulative effect of these matters on Markward's credibility, the Party contended by way of exceptions and argument that Markward's testimony concerning the Frankfeld matter and her compensation from the FBI, when viewed with her assertedly false testimony in the *Blumberg* case (see *CPUSA v. SACB*, 254 F. 2d 314, 330, for background on the *Blumberg* case) reveals a series of deliberate falsehoods which render her entire testimony untrustworthy and requires that it be disregarded as tainted.<sup>6</sup>

The Member-Examiner's observations concerning Markward do not constitute a finding that she palpably lied or that she testified in this or other proceedings to a deliberate series of falsehoods. Upon our independent review of the record, taking fully into account the cumulative effect of the credibility issues concerning Markward, we conclude that such a finding would not be warranted. Nor do we feel that Markward's testimony should be regarded as completely untrustworthy and tainted and should therefore be stricken. Upon a reassessment of her credibility, however, we conclude that Markward's testimony should be assayed with caution. We have scrutinized her testimony with care and conclude that the few findings in the Modified Report which are based in whole or in part upon her testimony

<sup>6</sup> In view of the Board's reevaluation of Markward's credibility which appears herein and supersedes all prior evaluations, there is no need to discuss respondent's exception 11 which objects to the Member-Examiner's failure to recommend striking a prior Board statement (Mod. Rept., fols. 2408, 2409) in evaluating Markward's credibility.

are in no way impaired in their evidentiary support.<sup>7</sup> Respondent's motion to strike Markward's entire testimony is premised upon credibility considerations heretofore resolved and the motion is denied.

#### THE WITNESS BUDENZ

Louis Budenz, a functionary of the Communist Party from 1935 to 1945, testified as a witness for petitioner at the original hearing concerning, among other things, a letter sent in 1945 (while Budenz was still in the Party) to the *Daily Worker* by its correspondent, Joseph Starobin, then in San Francisco (herein referred to as the "Starobin letter"), and to a conversation in 1939 with the then Communist Party treasurer, Charles Weiner (herein referred to as the "Weiner conversation").

In its decision issued January 9, 1958, the Court affirmed on the record at that time the action of the Board in refusing to order production of "alleged reports" made by Budenz to the FBI dealing with these two subjects. The Communist Party then petitioned the Court for rehearing and moved *inter alia* for leave to adduce as additional evidence all transcriptions and memoranda of oral statements made by Budenz to the FBI on the above two subjects. In the course of preparing a response to the petition and motion, Government counsel discovered that in the files of the Federal Bureau of Investigation were disc recordings of an interview witness Budenz had with the FBI in December 1945 which, as represented by Government affidavit, had been recorded without Budenz' knowledge. This circumstance was related to the Court and, concurrently, the Board acceded to so much of the respondent's petition for rehearing and motion as pertained to the two requests the Party had made at the original hearing for the production of statements which Budenz had made to the FBI, which requests had been denied by the Board. (See the two memoranda for the Board filed in the Court of Appeals on February 7, 1958.)

<sup>7</sup> The fact is that, as pointed out in the Recommended Decision (p. 9), in the few instances relied upon, Markward is, with two minor exceptions, corroborated by other credited evidence.



The Communist Party then filed in the Court a supplemental motion for leave to adduce additional evidence which related to the Budenz matter and, in substance, sought to broaden the scope of the remand acceded to by the Board. On April 11, 1958, the Court entered an order, accompanied by a memorandum, remanding the Budenz matter to the Board for the production of certain "statements" (as defined in 18 U.S.C. 3500) by Budenz to the Federal Bureau of Investigation. Subsequently, the Board asked for clarification by the Court of its order and memorandum, and on June 16, 1958, the Court stated that the order of April 11, 1958, should be construed as restricting production to Budenz' "statements" relating to the Starobin letter and the Weiner conversation only. The Court did not, as the Party requested, order production of all Budenz' "statements" relating to the subject matter of his entire testimony in this proceeding.

Pursuant to the Court's rulings, the Board in reopening the hearing ordered petitioner to produce all "statements" (as defined in 18 U.S.C. 3500) made by Budenz to the FBI concerning the "Starobin letter" and the "Weiner conversation," and denied a Communist Party motion to expand the production to include statements concerning other topics. (See memoranda opinions and orders of the Board issued April 29, 1958, May 20, 1958, and June 18, 1958.)

Thereafter, petitioner produced to the Member-Examiner, for *in camera* inspection, and excision of irrelevant matter, 30 disc recordings made on December 7, 10, and [fol. 2388] 12, 1945, while Budenz was being interviewed by the FBI. The Member-Examiner extracted from the discs and gave to counsel for respondent in typed form the portions found to be producible under the directions of the Court. Without objection, the excerpts were later received in evidence (C.P. Exs. 97, 98, 99A, 99B, 100, and 101). The entire set of discs are sealed and made a part of the record as Board Exhibit 2.

After respondent's receipt of the excerpts, the Member-Examiner indicated respondent's request for the recall of



the witness Budenz for further cross-examination would be granted and thereupon counsel for petitioner submitted a letter from Budenz' personal physician stating the physician's opinion that it would imperil Budenz' health due to a heart condition to appear as a witness in this proceeding. The Member-Examiner deemed it advisable to have an independent physical examination conducted by a heart specialist in New York City. By affidavit dated August 4, 1958, the specialist reported the results of his physical examination of Budenz and his conclusion that due to an "extremely serious cardiovascular disease" any examination of Budenz "were it to be carried out before the Board or by deposition or by cross-interrogatories in his home, might seriously affect his health or cause his death." He was of the opinion that "even the slightest amount of emotion could very well precipitate a serious outcome in [the] patient's life." (Board Exhibit 3-C.)

Upon receipt of the doctor's affidavit, the hearing was reconvened on August 7, 1958, and the parties agreed Budenz was unavailable for recall. Thereupon, respondent moved to strike all of Budenz' testimony, and in the alternative moved (1) to strike Budenz' testimony in so far as it relates to the Starobin letter and the Weiner conversation, (2) for an order directing the Attorney General to produce for respondent's examination the agents of the FBI who participated in the December 1945 interviews with Budenz, and directing that such agents bring with them their complete notes taken during the interviews and any statements or writings furnished the FBI by Budenz either prior to or during such interviews, and (3) that all other portions of the recorded interviews with Budenz (Board Exhibit 2) which are relevant to any matter to which Budenz testified in this proceeding be made available to it.

The Member-Examiner on August 25, 1958, denied the motions with the exception that he granted respondent's request to strike Budenz' testimony on the Starobin letter and the Weiner conversation, due to the unavailability of the witness for further cross-examination.

On November 13, 1958, while we had the case under advisement following oral argument on the exceptions to

the Recommended Decision, petitioner requested leave to file a supplemental affidavit because of contentions made [fol. 2389] by respondent at the oral argument. The Board stayed its decision and the supplemental affidavit was filed on November 21, 1958. The Board's review of this affidavit indicated counsel for petitioner may have been taking an erroneous view of the law in the matter of production of documents. For this reason, the Board on December 3, 1958, entered a further order, calling for all documents (of every description) purporting to record oral or written communications by Budenz to the FBI relating to the two pertinent topics. Counsel for petitioner thereupon produced to the Board four documents, portions of which related to the two topics; but contended they were not "statements," (as defined). Subsequently, however, without conceding they were "statements," petitioner agreed that after excision of irrelevant matter they be given to respondent for inspection, thereby removing the necessity of a Board determination on the question. Pertinent excerpts of these documents were given to respondent and later received in evidence without objection (C.P. Exs. 102 to 105, inc.).<sup>8</sup>

In the final argument on January 19, 1959, respondent merely took the position, without supporting analysis, that the produced documents establish (1) that Budenz' testimony on the Starobin letter and the Weiner conversation was deliberately false and (2) that there was information in the possession of the Department of Justice which so indicated, and hence his entire testimony should be stricken. Respondent contends that even if that position were not accepted Budenz' entire testimony must be stricken because it has been deprived of opportunity to develop "even

<sup>8</sup> Certain motions were filed by respondent subsequent to argument on exceptions. In view of petitioner's supplemental affidavit, respondent filed a motion on November 26, 1958, which it supplemented on December 8, seeking the reopening of the hearing to call all FBI agents who interviewed Budenz. Following production of C. P. Exs. 102 to 105 (inc.), this motion was withdrawn. In lieu thereof, respondent on December 29, 1958, filed motions to reopen the hearing and for the production of documents. The December 29 motions were denied by Board memorandum opinion and order issued January 13, 1959.

more damaging evidence concerning the nature of these discrepancies" and thus has been deprived of "important cross-examination going to the credibility of the witness."

Petitioner, on the other hand, contends that the documents confirm Budenz' testimony on the two topics and show that none of his testimony should be stricken.

We have here the unusual situation where an appellate court has remanded for the production of documents containing prior statements of a witness going to a portion of his testimony, and, after production of such statements and recall of the witness for further cross-examination, it then develops that the witness is unavailable for testimony. In view of respondent's motion to strike the entire testimony of Budenz, opposed by petitioner, we are faced ultimately with the question of what is the fair thing to do in relation to his testimony, all circumstances considered. [fol. 2390] On the one hand, for example, there is lack of opportunity for further cross-examination in light of the documents and, on the other, there is on the witness' part a lack of opportunity to be confronted with any alleged inconsistencies in the documents.<sup>9</sup>

The motion to strike Budenz' entire testimony leads to a review of pertinent circumstances of record. We have reviewed the contents of the documents produced and do not agree with respondent's assertion that on their face the documents produced show that Budenz' testimony on the Starobin and the Weiner matters was "deliberately false." From this it follows that we likewise do not conclude, as respondent contends, that petitioner had knowledge that the testimony was "deliberately false."

Respondent contends that (1) the responsibility for the deprivation of cross-examination rests with petitioner and (2) the loss of opportunity to cross-examine Budenz is a material loss; and that, under either contention, his entire testimony must be stricken. As to the first, we do not see that petitioner should be charged with responsibility for Budenz' unavailability for further cross-examination and,

<sup>9</sup> Budenz was, however, cross-examined at the original hearing on other documents containing prior statements relating to his testimony on the Starobin letter and the Weiner conversation.

for this reason, lose the benefit of his entire testimony as respondent contends. In opposing production of pertinent reports in the Government's possession at the original hearing, petitioner was merely taking a legal position which at that time had wide judicial support in various circuits; and petitioner's position was sustained at the hearing. It was not until later that the Supreme Court clarified the law on production of documents in the Government's possession (*Jencks v. U.S.* (1957) 353 U.S. 657).

In sum, we have considered respondent's various assertions in support of its contention that the entire testimony should be stricken because petitioner is responsible for the witness' unavailability for further cross-examination but we do not agree.

Concerning the asserted material loss of cross-examination, it is pertinent to state that Budenz testified on direct examination at the original hearing for almost 2 days and was cross-examined for 5 days. There were 8 transcript pages of direct on the Weiner conversation and 10 pages of cross. Our review of the record shows that respondent clearly had adequate opportunity, which was utilized, to conduct cross-examination on those portions of Budenz' testimony not involving the Starobin and the Weiner incidents. In presenting its evidence, respondent was given full opportunity to rebut his testimony. None of his other testimony was dependent upon, or inseparable from, his testimony on the Starobin and the Weiner matters.

[fol. 2391] As stated, Budenz was exhaustively cross-examined for 5 days on his testimony at the original hearing. To establish a material deprivation of cross-examination due to unavailability of the witness, respondent can point only to the lack of opportunity to pursue the cross-examination on the basis of the produced statements relating to the Starobin letter and the Weiner conversation. We conclude from our review that the preclusion of further cross-examination on the produced documents due to unavailability was not sufficient to constitute a material deprivation of cross-examination on his testimony as a whole.

We believe, however, that in this situation where the witness is unavailable upon production of his prior statements and where, resolving all doubts in favor of the cross-examiner, any room is seen for further cross-examination in the light of such documents, the fair thing is to strike the testimony on the Starobin letter and the Weiner conversation. We do this because of lack of opportunity for further cross-examination on the two topics.

There are additional considerations which militate against striking more than the above testimony, *e.g.*, corroboration by other credited evidence, either documentary or oral. Also, Budenz was specific as to names, dates, and places and none of the persons named by him was called in rebuttal or denial of the events with which they were associated by the witness. Even in the relatively few instances where there is no other supporting testimony, Budenz' testimony is not directly rebutted and is credible on the record as a whole.

To illustrate the corroborative testimony, both Lautner and Budenz testified that the references in the Communist Party constitution concerning the upholding of American democracy and the United States Constitution are incompatible with Marxism-Leninism, upon which the Party avowedly bases its activities and policies (see J.A. 975, 979, 1153-1154; Mod. Rept., fols. 2440, 2441). Likewise, other credible evidence corroborates Budenz' testimony concerning Gerhardt Eisler (see, *e.g.*, J.A. 969-970; Mod. Rept., fol. 2509).

As an example of testimony inherently probable from the record and unrebutted, Budenz testified that in 1940 Party official Eugene Dennis stated at a meeting of Party functionaries held during the period of the Hitler-Stalin Pact that the Party should be prepared if the United States joined Great Britain in the war against Hitler to turn the so-called imperialist war into a civil war, as Lenin advocated. Dennis, to whom the statement was attributed, was not called to deny it. This testimony is credible in view of documentary evidence, as well as oral testimony, which shows that the program of turning imperialist wars into civil wars, if conditions are favorable, is part of the doctrine of the Communist movement. (See, for



example, the doctrine of Marxism-Leninism at Mod. Rept., fol. 2424, first par., and the evidence set forth at Mod. Rept., fols. 2533, 2534, and 2605.)<sup>10</sup>

The corroboration of Budenz on most of his testimony and the inherent probability of his un rebutted testimony on other topics are pertinent considerations in evaluating such testimony. In fact, even if it were assumed, *arguendo*, that he deliberately lied about the Starobin letter and the Weiner conversation, we would not be *required* to disbelieve or strike the whole of his testimony. *Communist Party v. SACB*, 254 F. 2d 314, 330-331; *NLRB v. Universal Camera Corp.*, 2 Cir., 179 F. 2d 749, 754, reversed on other grounds, 340 U.S. 474.

In view of the foregoing considerations, we conclude that the fair disposition of the question is to strike the Budenz testimony on the Starobin letter and the Weiner conversation and deny the motion to strike the testimony in all other respects.<sup>11</sup>

There remains for consideration the effect upon the Board's Modified Report as a result of striking that testimony.

Due to the striking of Budenz' testimony concerning the Starobin letter, there are deleted from the Modified Report

<sup>10</sup> Respondent's exceptions 16, 17, and 18 directed to the findings in the Recommended Decision relating to crediting Budenz' testimony on the Party constitution, Eisler and Dennis are rejected. In exception 19, respondent repeats its contention that the original cross-examination of Budenz on such topics as Gerhard Eisler, Eugene Dennis, and Runag demonstrated that he is an untrustworthy witness. We have twice examined the charges that perjury or taint have been shown by the original cross-examination and have concluded consistently that there was no warrant to strike his testimony. This conclusion was affirmed by the Court (*CPUSA v. SACB*, 254 F. 2d 314, 331) and nothing has developed during the instant remand to cause us to change our conclusion.

<sup>11</sup> The testimony stricken from the record is as follows: concerning the Starobin letter, R. 13837, line 1, through R. 13840, line 22; R. 13841, lines 3 through 10; R. 13841, line 24, through R. 13844, line 10; R. 14096, line 9, through R. 14125, line 19; concerning the Weiner conversation, R. 13818, line 10, through R. 13819, line 21, and R. 14061, line 15, through R. 14070, line 13. Communist Party Exhibit 67, which was introduced during cross-examination on the Starobin letter, is also stricken.



at page 98 the findings of fact based upon such testimony. (See Appendix.) The Party excepts (No. 12, p. 6) to the Member-Examiner's finding (Rec. Dec., p. 11) that the [fol. 2393] deletion does not give rise to any change or modification in the Board's conclusion. (Mod. Rept., fol. 2505) that:

... in 1945 respondent reverted to "its basic Communist principles" (*supra*) and reemphasized Marxism-Leninism upon the issuance of a statement to the effect that it should do so by a leading foreign spokesman of the world Communist movement.

As appears from the Modified Report, the "leading foreign spokesman of the world Communist movement" referred to in the above conclusion is Jacques Duclos, a leading official of the French Communist Party and onetime member of the Executive Committee of the Communist International; also, the "statement" above referred to is the article written by Duclos in April of 1945, known in the record as the "Duclos article." (See Mod. Rept., fol. 2502, 2d par. and fn. 70b.)

The now stricken Budenz testimony which was a portion of the evidence considered in reaching the above conclusion was, in substance, that Starobin wrote to the *Daily Worker* that Manuilsky, a Soviet Communist official, while in this country as a representative to the United Nations Conference, stated that the American Party should observe more carefully the guidance and counsel of the French Communists. (Mod. Rept., fol. 2503.)

We have reevaluated the conclusion quoted above without the Budenz testimony on the Starobin letter and find it is established by a preponderance of the evidence. As found in the Modified Report, the American Communist Party from its inception to 1944 faithfully operated as a disciplined Communist organization in the United States, applying the fundamentals of Marxism-Leninism for the overthrow of capitalism and the establishment of a Communist dictatorship of the proletariat. For about one year commencing in 1944, the Party called itself the Communist Political Association and under the leadership of Earl Browder accepted a deemphasis of militant doctrine but in the 1945

reorganization reverted to its basic organizational form and policies.

This reorganization was formalized in June and July of 1945. The Modified Report summarizes the evidence and concludes that the reorganization resulted from the Duclos statement, issued in April of 1945. Among the facts so summarized are Duclos' statement that the 1944 change of the American Communist Party to the Communist Political Association was wrong and contrary to proper Marxist-Leninist doctrine; that a powerful Communist Party in the United States is necessary; and, that Browder as leader of the [fol. 2394] Communist Political Association was guilty of revisionist errors.<sup>12</sup> Upon the release of the Duclos article, it was published by the Party in *Political Affairs* and the *Daily Worker* and meetings and conferences were called with dispatch and held throughout the Party to involve the membership in action to correct the errors pointed out by Duclos and to reconstitute the Party along the lines enunciated by Duclos.

At these meetings and conferences high Party officials expressed appreciation for and praise of the Duclos article. One such official informed the members present that they had been assembled for the purpose of discussing the Duclos article and that the article did not represent Duclos' views alone but those of the European Communists. In this connection, the record shows that the Duclos article attacked many aspects of the policy of the United States along the same lines then appearing in the official Soviet press. The Attorney General's expert witness, Dr. Mosely, established that the Duclos article represented an authoritative criticism and series of recommendations by an outstanding leader of the international Communist movement; and this is otherwise confirmed by the record.

At a meeting attended by petitioner's witness Meyer, which had been called following the publication of the Duclos article, Meyer took the position that the Duclos article was

<sup>12</sup> Among the statements of Duclos were: that in changing to the Communist Political Association, the Party "swerved dangerously from the victorious Marxist-Leninist doctrine whose rigorously scientific application could lead to but one conclusion, not to dissolve the American Communist Party but to work to strengthen it" (A. G. Ex. 208, p. 670).

a policy of war between the United States and the Soviet Union whereupon Meyer was condemned by Party leader Jack Stachel as "provocative, and revisionist and liquidationist." (J.A. 707.) Respondent's Executive Board passed a resolution supporting the Duclos statement. At a *Daily Worker* staff meeting, likewise called on the Duclos article, the Party functionary serving as advisor on foreign affairs to the *Daily Worker* stated that the Duclos statement on revisionism and for rejection of class peace should be interpreted to mean that socialism could be obtained with the help of the Red Army. Party leader Stachel opposed that position as not specifically in line with the Duclos statement and said it would expose the Party.<sup>13</sup>

Only three months after the issuance of the Duclos article, the Party reverted to the type of organization prescribed in that article. Browder, whose policies as leader of the CPA were condemned by Duclos, was deposed as leader [fol. 2395] and subsequently expelled from the Party. (Mod. Rept., fols. 2503-2504.) At the original hearing, respondent presented no satisfactory explanation of such hasty changes and for the fact that the pre-reconstitution Party meetings revolved primarily around the Duclos article.<sup>14</sup>

The Party contends that without the Budenz testimony on the Starobin letter there is no record support for the "insinuation" that the 1945 reconstitution "was in response to a message . . . from a foreign leader of the 'world Communist movement'"; and that A.G. Ex. 210 and the uncontradicted testimony of its witness Elizabeth Gurley Flynn show that the Duclos article was written to the French Communists, that it was never regarded by American Party leaders as a message to them, and that it served only to

<sup>13</sup> This latter finding is based upon testimony of the witness Budenz and is credible in the light of the Meyer testimony.

<sup>14</sup> In a report to the special convention held in July 1945 which reconstituted the Party as the American Communist Party, a high Party official without further explanation stated that "Because of the limited time to prepare this special convention and the need for the convention to center its attention on the correction of our revisionist errors as well as the reorganization of our leadership, it has not been possible to involve the membership in a real discussion on amending the Constitution." (A. G. Ex. 209, p. 800.)

accelerate a development which would shortly have taken place had the article never been written.

A.G. Ex. 210, relied upon here by the Party, does not show that the Duclos article served only to accelerate a change in the Party which would shortly have taken place without the article. The exhibit is a resolution adopted by the Party in July 1945 in connection with the reconstitution. In fact, this document expresses appreciation of the "basic correctness of the sound fraternal, Marxist opinions expressed in the recent article of Jacques Duclos" (Mod. Rept., fol. 2504) and acknowledges the "validity of Comrade Duclos' criticism and of Comrade Foster's repeated warnings," (A.G. Ex. 210, p. 832.) Thus, any inference from this Party resolution would be that the Duclos article was authoritative in the hasty reconstitution.

Party witness Flynn testified that prior to May 1945 there was a great deal of discontent among older members of the Party over the formation of the Communist Political Association and discussions were going on in the Party about it; and that the Duclos article was of great interest although:

I doubt very much if we would have given it the same attention, possibly six months before, but the changing conditions of our country as reflected in the discussions in our own Party sharpened our interest in what the leader of a sister Party had to say. In that sense, and in that sense only, was the article read and discussed. (J.A. 1295.)

[fol. 2396] Flynn also testified that she later met Duclos in France; that she told him the American Party had been reconstituted and appreciated very much his contribution; and that he looked surprised and said he had written his article for the French Party using the American mistakes as an example. To the extent that Flynn's testimony is designed to show that the Duclos article did not play an important role in the Party reconstitution, it is contrary to the preponderance of the evidence.

The incident of the Starobin letter is not connected with any of the evidence above summarized showing the nature

of the Duclos article and its hasty acceptance by the Party and, in any event, is not necessary to the finding. It was the Duclos article, not the Starobin letter, that was the subject of speedy indoctrination and action. We find that the conclusion in the Modified Report (fol. 2505) concerning the 1945 reorganization of the Party is fully supported in the record after striking Budenz' testimony on the Starobin letter.

Turning now to the striking of Budenz' testimony on the Weiner conversation, there is deleted from the Modified Report (fol. 2564) the finding based thereon. (See Appendix.) This stricken finding was merely an instance indirectly indicating financial aid to the Party from foreign Communist sources prior to 1939. In the Modified Report we concluded that there was no evidence of any substantial foreign financial aid to the Party after 1940 (the date when the Party announced disaffiliation from the Communist International) and no evidence of any such aid after 1944. The only significance given to the *entire* evidence concerning financial aid was in arriving at the conclusion that such aid was furnished by the Soviet Union "during the formative period of respondent in the United States" (Mod. Rept., fol. 2568), which obviously was prior to 1940. No inference has been drawn as to continued aid and we found that foreign financial aid disappeared when the Party "became a going organization" (*ibid.*).

Included in the evidence presented by the Attorney General on the issue of financial aid was the testimony of Budenz to the effect that during the 1930's indirect aid was rendered the *Daily Worker* in the form of free political news dispatches furnished by the Moscow news agency Runag. The Party contends that the finding thereon should not be retained because it was shown to be false on original cross-examination and because it exhibits "the same pattern of fabrication which has been established in the case of the witness' testimony concerning the Starobin letter and the Weiner incident." (Exception 13, p. 6.) We believe for the reasons set forth above that even if this particular testimony were to be disregarded the limited conclusion that foreign financial aid was given only during the Party's formative years would be unchanged. However,



there is no basis for disregarding the testimony. The charge that cross-examination showed Budenz' direct testi- [fol. 2397] mony on Runag to be false is one of the matters mentioned, *supra*, that has twice before been considered by us and rejected.

The early financial aid is established by a clear preponderance of direct evidence without regard to the indication given from the now stricken incident of the Weiner conversation, which by its nature had little materiality. Accordingly, the deletion thereof does not require any modification in our conclusion on the issue of financial aid as set forth at folio 2568 of the Modified Report.

#### OTHER QUESTIONS

In exceptions II (1A), (B) and (C) respondent argues, in substance, that (a) the Member-Examiner erred in concluding that the reversals of convictions in *Yates, et al. v. United States*, 354 U.S. 298, and *United States v. Jackson*, 257 F. 2d 830, have no cognizable effect on the Board's findings and that convictions of respondent's leaders under the Smith Act (18 U.S.C. 2385) are irrelevant but, if not, acquittals and dismissals of indictments in Smith Act cases involving respondent's members and leaders are also relevant; (b) the *Yates* decision, for the reasons stated in the Party's memorandum regarding applicability of *Yates v. United States* previously filed with the Court of Appeals prior to this remand,<sup>15</sup> requires the striking of certain findings in the Modified Report (fols. 2445, 2600, 2601, 2602, 2607, 2609) in relating to overthrow of this Government; and (c) the decisions of the Supreme Court in *Yates v. United States, supra*, and *Nowak v. United States*, 356 U.S. 660, have precluded a finding that (1) adherence to Marxism-Leninism excludes adherence to the Constitution and (2) adherence to Marxism-Leninism, and being a vanguard Party, are evidence of Soviet domination and control and

<sup>15</sup> The Court of Appeals had this memorandum before it prior to its decision on January 9, 1958, and, obviously, did not agree with respondent's position since it did not set aside the Board's order.



operation to advance the objectives of the world Communist movement described in section 2 of the Act.

As to the first contention, we believe it is proper to notice the reversal of the convictions of respondent's officers. The references to the convictions thereof in footnote 126 at folio 2602 of the Modified Report are accordingly stricken, and resultant minor modifications are made in the subsidiary findings, at folio 2604 of the Report. (See Appendix.) These subsidiary findings, as modified, remain supported by the record. The fact remains that respondent's foremost leaders were convicted and the convictions upheld. (See, e.g., *Dennis; et al. v. United States*, 341 U.S. 494, and *Flynn, et al. v. United States*, 216 F. 2d 354, cert. den., 348 U.S. 909). Concerning the contention regarding relevancy, the fact of those convictions is one consideration in a mass of evidence establishing the Board's finding in relation to the "allegiance" criterion of the Act (sec. 13(e)(8); see Mod. Rept., [fol. 2398] fols. 2599 to 2607, inc.). We reassert that, on this record, such evidence is relevant in considering whether respondent's leaders and a substantial portion of the membership consider the allegiance they owe to the United States is subordinate to their loyalty and obligations to the Soviet Union. As to the alternate contention, viz., the acquittals and dismissals are likewise relevant, suffice it to say that after modifying the finding to delete the names of the pertinent individuals, we have reevaluated the evidence and findings and have concluded that such deletions require no further modification in the Modified Report.

We come now to the contention that *Yates* requires the striking of the findings described above. We do not agree. That case was a criminal trial of individuals under the Smith Act. The issues there were markedly different from those in this proceeding and we do not read *Yates* as requiring the striking of the findings to which respondent alludes. As to the remaining contention, we do not find in *Yates* or *Nwauk* any holding warranting the conclusions drawn by respondent. In each proceeding, both involving different issues, the Court found an insufficiency of evidence in regard to the individuals tried.

## [fol. 2399] CONCLUSION AND RECOMMENDATION

Upon reevaluation of the entire record in the light of the foregoing, we reaffirm as established by the preponderance of the evidence all the findings and conclusions in the Modified Report of the Board issued December 18, 1956, with the changes and modifications herein made. We also reaffirm the conclusion on the preponderance of the evidence that the Communist Party is a Communist-action organization, as defined in the statute. Accordingly, it is

RECOMMENDED that the United States Court of Appeals for the District of Columbia Circuit affirm the Board's Order entered April 20, 1953, requiring the Communist Party of the United States to register as a Communist-action organization under section 7 of the Subversive Activities Control Act of 1950.

Dorothy McCullough Lee, Chairman; Francis A. Cherry, Member; R. Lockwood Jones, Member; James R. Duncan, Member (Member Donegan not participating)

[Seal]

February 9, 1959  
Washington, D. C.

[fol. 2400]

## APPENDIX

The following, designated by page and line, constitute all findings stricken, corrected and changed in the Modified Report of the Board as issued on December 18, 1956.

*Modified  
Report*

Folio 2442  
(line 5)

Change:  
"Markward" to read "Meyer".

Folio 2499  
(lines 11-15)

Strike:  
"We note in this connection that in August 1951 respondent quoted with approval in *Political Affairs* a statement by the leader of the Communist Party of China that the *History of the Communist Party of the Soviet Union* 'is the highest synthesis, the highest generalization of the world Communist movement.' (Pet. Ex. 484, p. 35.)"

Folio 2503  
(lines 27-34)

Strike:  
"Budenz testified that while at the *Daily Worker* office he read part of a letter from Starobin, the *Daily Worker* correspondent attending the United Nations Conference on Organization in San Francisco, which was to the effect that Manuilsky [a leading Soviet Union Communist and Ukrainian representative to the United Nations Conference] had expressed indignation that the American Communist Party had not criticized the American Government leaders more severely, and stated the American Party should observe more carefully the guidance and counsel of the French Communists.<sup>70c</sup>"

Folio 2503  
(lines 37-41)

Strike:  
"<sup>70c</sup> Respondent contends that cross-examination showed that Budenz made in-

consistent statements regarding this matter in a book he had previously written and in prior testimony before the House Un-American Activities Committee. We do not read those prior statements as substantially inconsistent and the essence of his testimony on this is credited."

[fol. 2401]  
Modified  
Report

Folio 2525 Strike:  
(lines 30-37)

"Speaking through *Political Affairs* for August 1951, respondent took the position that 'The scales are weighed in favor of the people's peace forces, headed by the Soviet Union' and there is quoted with obvious approval the statement of Comrade Mao Tse-Tung, 'the tested leader of the Communist Party of China' that the *History of the Communist Party of the Soviet Union* 'is the highest synthesis, the highest generalization of the world Communist movement.' (Pet. Ex. 484, pp. 11, 35, emphasis added.)"

Folio 2535.  
(line 24)

Change:

"(Pet. Ex. 406.)" to read "(Pet. Ex. 405)".

Folio 2550  
(lines 2-12)

Strike:

"This same official in an article published in *Political Affairs* in May 1951 similarly stated:

'Within the boundaries of our country, an oppressed nation, the Negro people in the Black Belt of the South, is fighting for full freedom . . . not only the Negro workers, but the Negro people as a whole . . . are a

most important and staunch ally of the American working class, and . . . the future fate of the American working class is closely bound up with the future of the Negro nation.' (Pet. Ex. 481, p. 32.)"

Folio 2564  
(lines 22-26)

Strike:

"In 1939 the treasurer of the CPUSA stated that it was impossible to put additional CPUSA funds into the *Midwest Daily Record*, a CPUSA-controlled paper, because at that time communications to their sources of funds abroad, i.e., the Soviet Union, had been disrupted."

[fol. 2402]  
*Modified  
Report*

Folio 2602  
(lines 33-35)

Strike:

"... Alexander Trachtenberg, George B. Charney, Sidney Steinberg (Stein), James Jackson, William Schneiderman, Dorothy R. Healey, Rose C. Kusnitz, and Frank Carlson."

Folio 2602  
(lines 38-39)

Strike:

"... *U.S. v. Trachtenberg, et al.*, C-136-7 pending on appeal U.S.C.C.A. Second Circuit; *Yates v. U.S.*, 225 F. 2d 146, now pending on writ of certiorari."

Folio 2604  
(line 18)

Change:

"three" to "two".

Folio 2604  
(line 19)

Change:

"Four" to "Three".

Folio 2604  
(line 20)

Strike:

"Schneiderman".

[fol. 2403]

BEFORE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 51-101

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HERBERT BROWNELL, JR., Attorney General of the  
United States, Petitioner,

—v.—

THE COMMUNIST PARTY OF THE UNITED STATES  
OF AMERICA, Respondent.

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William A. Paisley, Joseph Alderman, Nathan B. Lenvin, Lawrence K. Bailey, Rex A. McKittrick, Noel E. Story, B. Franklin Taylor, Jr., Frank DeNunzio, Clifford J. Nelson, Rourke J. Sheehan, Robert B. Gaston, James T. Devine, Herbert E. Bates, Thomas J. Brennan, David L. Ketter, Benjamin C. Flannagan, and Joseph M. Wysolmerski, for petitioner.

Vito Marcantonio (since deceased), John J. Abt, and Joseph Forer, for respondent.

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**Modified Report of the Board—December 18, 1956**

[fol. 2406]     **PRELIMINARY STATEMENT**

On November 22, 1950, the Attorney General of the United States, petitioner herein, acting under section 13(a) of the Subversive Activities Control Act of 1950, hereinafter called the Act, filed a petition with the Board for an order requiring the Communist Party of the United States of America (CPUSA), respondent herein, to register with the Attorney General as required by sections 7(a), (c), and (d) of the Act. The petition alleges that respondent is a Communist-action organization as defined in the Act and it sets forth numerous allegations of fact in support of its contention.

Hearings for the purpose of taking evidence on the petition commenced before a Hearing Panel of Board



Members on April 23, 1951, and terminated on July 1, 1952.<sup>1</sup>

On October 20, 1952, the Hearing Panel issued its Recommended Decision finding respondent to be a Communist-action organization as defined in the Act and recommending that the Board issue an order requiring respondent to register as such with the Attorney General of the United States.

Exceptions to the Recommended Decision were filed, as was a motion by respondent to reopen for additional evidence on three of petitioner's witnesses, the latter being later denied by the Board. Oral argument on the exceptions took place on January 7, 1953, and the Board on April 20, 1953, issued its Report and Order finding the Communist Party to be a Communist-action organization and ordering it to register as such with the Attorney General.

While the proceeding was pending review in the United States Court of Appeals for the District of Columbia Circuit, the Party pursuant to section 14(a) of the Act moved the Court for leave to adduce additional evidence which would show that petitioner's witnesses Crouch, Johnson and Matusow were untrustworthy and should be accorded no credence. This motion was denied by the Court on December 23, 1954, and on the same date the Court affirmed the Board's order of registration, *sub nom. Communist Party v. Subversive Activities Control Board*, 223 F. 2d 531.

The Supreme Court of the United States granted certiorari on May 31, 1955. On April 30, 1956, the Supreme Court found error in the denial by the Court of Appeals of the Party's motion for leave to adduce additional evidence and, without deciding other issues, reversed and remanded the case to the Board for appropriate proceedings, 351 U.S. 115.

The Board moved in the Supreme Court on May 2, 1956, that its judgment be certified to the Court of Appeals forthwith, and the Party opposed on the grounds that it

<sup>1</sup> As will appear later, the hearing was reopened on December 11, 1956.

was considering filing a motion for rehearing or in the alternative for modification of the terms of remand. The Supreme Court, notwithstanding the Party's opposition, certified the judgment to the Court of Appeals on May 15, 1956, and that Court on May 16, 1956, issued its "Order Pursuant To The Judgment Of The Supreme Court," remanding the case to the Board "for proceedings in conformity with the opinion of the Supreme Court. See section 14(a) of the Subversive Activities Control Act of 1950 . . ."

The Party on May 21, 1956, filed three motions with the Board, one to reopen for additional evidence going to the merits of the proceeding and two going to the credibility of witnesses. After oral argument, the Board denied the motions by Memorandum Opinion and Order of August 10, 1956. On the same day the Party filed these three motions with the Board it moved in the Court of Appeals for an amendment and clarification of that Court's Order entered May 16, 1956, pursuant to the judgment of the Supreme Court seeking to have the Court expressly set aside the Board's order directing the Party to register " . . . in order to insure that further proceedings before the Board will conform to the judgment of the Supreme Court and that the Board will not erroneously deny petitioner an opportunity to introduce material evidence." The Court denied the Party's motion per curiam without opinion on June 13, 1956.

On August 17, 1956, the Party, pursuant to section 14(a) of the Act, again moved in the Court of Appeals for leave to adduce additional evidence which assertedly would show (1) that the Board's findings that there exists a world Communist movement as described in section 2 of the Act [fol. 2408] and that it is a Communist-action organization were erroneous when made and in any event are not now true and (2) that the testimony of petitioner's witness Markward "was tainted with perjury and was false."

These motions were denied by the Court of Appeals in its order of November 5, 1956. In so doing, however, the Court stated that insofar as the motion related to an alleged perjury by the witness Markward in respect to one

Annie Lee Moss "permission [is] here granted to the Subversive Activities Control Board to entertain a motion upon the same matter if sufficient and appropriate showing is made to it for that purpose." Subsequently, on November 16, 1956, the Party filed with the Board another motion with supporting affidavit, directed in part to the foregoing subject matter, seeking a reopening of the hearing to show that witness Markward "is a perjurer, whose testimony should be expunged from the record of this case." In its supporting affidavit, respondent charged, additionally, that Mrs. Markward had committed perjury in *United States v. Blumberg*, Cr. No. 17963, U.S.D.C., E.D. Pa., a prosecution under the so-called membership clause of the Smith Act, in that reports made by her to the FBI did not, upon production in Court, contain statements to which she had there testified. The Board granted the motion in part<sup>2</sup> and the hearing was reopened on December 11, 1956, with the full Board presiding, and closed the same day. At the reopened hearing the witness Markward was examined and, among other things, her previous testimony with respect to Annie Lee Moss<sup>3</sup> was probed by counsel for respondent. At Board direction, pertinent portions of her testimony in the *Blumberg* case, *supra*, designated by both parties, were submitted and are in evidence. (C.P. Ex. 93.)

Since the hearing was reopened solely to examine the credibility of witness Markward we observed her with particular care while she testified; and we reassessed her testimony after she testified at the reopened hearing. She strikes us as a sincere, forthright witness who strives for the truth as best she knows it. She does not appear to be one who would deliberately fabricate testimony. At the reopened hearing, respondent did not approach establishing Mrs. Markward had committed perjury in any of her testimony concerning Annie Lee Moss.

<sup>2</sup> See Memorandum Opinion and Order of the Board issued December 3, 1956; see also the one issued December 13, 1956.

<sup>3</sup> We might say that Annie Lee Moss plays no part in the merits of this proceeding and was not referred to in the hearing in chief.

[fol. 2409] In reevaluating the witness we have also considered the transcript of the submitted portion of her testimony in the *Blumberg* case, *supra*.<sup>4</sup> There, it developed that reports made by her to the FBI regarding Party meetings and a Party class did not contain, in *haec verba* or what in ordinary parlance would be synonymous terms statements testified to by her as having been made by individuals at such meetings or class. In assessing that development, however, we have considered as best we could under the circumstances the pertinent cross, redirect, and re-cross examination, as submitted (C.P. Ex. 93, *supra*). Having done this, we are unable to conclude that perjury was shown, though the review served as a caution in assessing her testimony here. At the outside, our duty ends there. By this we mean, it is not for us to attempt to project ourselves into that trial to determine to what extent the effect of her direct examination had been shaken. No Court would impose such a burden. And, certainly, no Court would hold that witnesses whose direct testimony is disturbed in cross-examination are, therefore, perjurers and their testimony in other cases should be stricken. If so, there would be few willing witnesses left in the land. As we interpret the Supreme Court's opinion in *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, the Board is in effect abjured to consider, realistically, whether witnesses before it have deliberately fabricated testimony in other proceedings involving subject matter similar to Board proceedings. That direction could, of course, make for an endless road unless reasonably construed. And a reasonable construction is what we have sought here.

In reassessing witness Markward's testimony after the reopened hearing we not only see no reason to strike her

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<sup>4</sup> We have, additionally, examined *in camera* a report by the witness to the FBI concerning a Party meeting testified to in the hearing in chief which we ordered produced when reopening the hearing. Upon review, we concluded it should not be made available to respondent and remains in the record, sealed. (See Memorandum Opinion and Order of the Board dated December 13, 1956.)

testimony, as respondent would have us do, but no reason to substantially discredit her.<sup>5</sup>

[fol. 2410]. In proceeding upon remand pursuant to the Supreme Court's opinion and the order of the Court of Appeals we have expunged from the record, for the reasons stated in our Memorandum Opinion of August 10, 1956, all testimony of the witnesses Crouch, Johnson, and Matusow, and all documentary evidence received through them which depended upon such testimony to establish competency, relevancy or materiality, namely, Petitioner's Exhibits No. 146 through 148, inclusive, 150 through 155, inclusive, 293, 294, 419, 420, 423, and Communist Party Exhibits 11, 20, 63, 63-A.<sup>6</sup> On September 18, 1956, oral argument took place on whether the Board's order could be supported by a preponderance of the evidence on the record as expurgated.

As the Supreme Court directed, we have reconsidered our determination on the record as expunged, and have reassayed the findings of the Board's Report in so doing and the exceptions originally filed. Our reconsideration leads to the conclusion that all major findings in the Board's Report remain supported and, in fact, the expunction left no substantial gaps in the evidence. In the interest of a Report readily reviewable we decided that a modified Report containing all findings rather than one which must be read with the original Report was indicated. Such procedure, in addition, enabled the Board to make such restatements, modifications, comments on witnesses, or formal rearrangements as commended themselves on reconsideration.

<sup>5</sup> It so happens the Report rests upon a comparatively few findings which are supported in whole or in part by her testimony. We might say the really vital part of petitioner's case is documentary evidence, which to a considerable extent needs relatively little oral illumination, as a scrutiny of the Report will show, see, e.g., the sections of the Report on "World Communist Movement," "Marxism-Leninism," and those containing respondent's major policies and organizational structure. The section on "Nondeviation" rests more heavily on testimony. Dr. Mosely's, to illuminate the exhibits but respondent does not attack his credibility.

<sup>6</sup> Petitioner's objections to striking its exhibits Nos. 294, 422, and 423 are overruled.

This was a lengthy proceeding with a record of some 14,000 transcript pages and approximately 500 exhibits, many of which are book length. Due to the nature of the issues, it was necessary to examine respondent's entire existence, some 30-odd years. Being the type of organization it is—prolific in its writings and, by its own admission, frequently obscure in some of its activities—it is necessary to piece together a myriad of activities and official statements to ascertain its nature and status.

Testimonial evaluation problems are present in the record, due in some instances to the remoteness in point of time of events the subject of testimony. There are several occasions where inconsistencies were developed on cross-examination. Where the Board considered the evaluation problem was such that reliance should not be placed upon disputed testimony it has been disregarded. To set forth and resolve all such details in a record of this magnitude would hardly be expected. Where warranted, however, we treat specifically with conflicts in the evidence and the credibility of witnesses in the body of the Report.

Several of petitioner's witnesses are in the category of "FBI operatives" and in varying degrees received financial remuneration from the Government; most of the remainder were formerly in the Party and either left or were expelled.<sup>7</sup> The Board scrutinized their testimony with the care due under the particular circumstances, having regard for judicial precedents; and it likewise considered the interest of petitioner's witnesses where manifested.

Two of respondent's three witnesses are top officials of respondent and have an obvious interest in this proceeding. Both have been convicted of conspiring to teach and advocate the overthrow of the Government by force and violence (Smith Act). The third was an expert witness—a member of respondent—who indicated a like interest, which is ordinarily not anticipated in an expert witness. There was a significant lack of rebuttal by respondent on a multiplicity of specific conversations and events put in

<sup>7</sup> Pertinent background data on all witnesses is set forth in Appendix A.



evidence by petitioner at which witnesses available to respondent were present.

We have weighed these considerations, *inter alia*, in assessing the evidence.

As noted above, the parties were notified that the Board would proceed on remand by expunging the testimony of the three witnesses under attack and would reconsider its earlier determination in the light of the record without such testimony. Thereafter, the parties were heard orally before the full Board on the issue of the sufficiency of the evidence, after the expunction, to support the registration order. No additional evidence on the merits of the case has been adduced on remand. At the reopened hearing on the credibility of a witness the full Board presided. Pursuant to section 14(a) of the Act, this Modified Report and Recommendation will be filed in the Court of Appeals.

[fol. 2412] FINDINGS OF FACT

Respondent is an organization in the United States within the meaning of the term as defined in section 3(2) of the statute and is not a diplomatic representative or mission of a foreign government accredited as such by the Department of State within the exemption of section 3(3) of the statute.

Respondent was organized in 1919 and has been in existence continuously since that date. It consists of many thousands of members in the United States organized at city, county, state and district (including multi-state) levels which include clubs, cells, fractions, branches, and sections, and committees thereof. The National Committee is the top internal administrative and executive body controlling the internal affairs between conventions. Its executive committee is referred to as the Politbureau and in reality is the controlling committee of the Communist Party. Various operating committees are maintained for specific purposes.

The official organs of respondent are the *Daily Worker*, issued daily with a Sunday edition called *The Worker*, and *Political Affairs*, issued monthly, formerly named *The Communist*. Respondent has also issued a number of pam-

phlets, circulars, local area newspapers, leaflets and other publications. The official organs and the other publications which are used in this Report are found to be reliable and probative of the facts for which used, including evidence as to the policies, purposes, aims, and programs of respondent. We later make additional findings on the nature and character of respondent's official organs. Since it is fundamental to respondent, we treat first with Marxism-Leninism.

#### 1. MARXISM-LENINISM

Respondent's 1948 constitution (Pet. Ex. 374), readopted in 1950, and its amended answer assert that Marxism-Leninism is basic to the CPUSA. We recognize that the merits of the theory of Marxism-Leninism, as such, is not an issue in this proceeding. Nor is it our purpose to consider the merits of capitalism vis-a-vis communism. Marxism-Leninism is basic to respondent, however, and there is the considerable evidence of record concerning it. We record our findings, therefore, of what it is in essence, so far as relevant, and how it is applied by respondent. The extent to which respondent applies Marxism-Leninism is more specifically treated throughout the other parts of this Report.

[fol. 2413]. The sources of Marxism-Leninism and also its corpus are to be found in the writings of Marx, Engels, Lenin, and Stalin and their collaborators, which writings are referred to in this proceeding as the "Communist Classics." In order to understand the content of these "Classics," it is desirable to examine something of the background in which they were produced and also to indicate what we consider to be the chief, relevant contributions of the above individuals to the corpus of Marxism-Leninism.

Lenin's classic *Imperialism* (Pet. Ex. 140) was written in 1916 and revised by him in 1917; *State and Revolution* (Pet. Ex. 139) was written by Lenin in 1917, being released in August, and was issued with a minor amendment in the second edition in December 1918. Stalin wrote *Foundations of Leninism* (Pet. Ex. 121) in 1924, and his work

called *Problems of Leninism* (Pet. Ex. 138) followed in sequence. Dimitroff's *The United Front* (Pet. Ex. 149) is basically a compilation of reports, speeches, and articles made by him as general secretary of the Communist International from August 1935 to the end of 1937. Dimitroff's *Working Class Unity—Bulwark Against Fascism* (Pet. Ex. 141) is a pamphlet edition of his report to the Seventh Congress of the Comintern, held in Moscow in July 1935. Stalin's *Mastering Bolshevism* (Pet. Ex. 335) consists primarily of the text of his reports as general secretary of the Communist Party of the Soviet Union to that Party's Central Committee made in March of 1937. *Strategy and Tactics of the Proletarian Revolution* (Pet. Ex. 343) is a compilation of writings, in the main, of Lenin and Stalin, and is primarily concerned with the tasks, strategy, and tactics of the Communist International as the organized apparatus of the world Communist movement and in fact comprised Chapter VI of the *Programme of the Communist International* (Pet. Ex. 125), issued in 1928. The *History of the Communist Party of the Soviet Union (B)* (Pet. Ex. 330), first issued in 1939, was edited by a commission of the Central Committee of the Communist Party of the Soviet Union, and is generally considered a work of Stalin.

Also fundamental to the corpus of Marxism-Leninism are the official *Theses and Statutes of the Third (Communist) International* (Pet. Ex. 8), issued in 1920; its *Programme* (Pet. Ex. 125, *supra*); and the *Resolutions* (Pet. Ex. 137) of the Seventh Congress, held in Moscow in 1935.

Of the other documents of record in which the corpus of Marxism-Leninism is to be found, this leaves only *The Communist Manifesto* of Marx and Engels (Pet. Ex. 31), written in 1848, and Lenin's *What Is To Be Done?* (Pet. Ex. 417), written in 1902.

[fol. 2414] Hence it is readily apparent that the corpus of Marxism-Leninism, as evidenced in this record and as appears to be the fact, is comprised mainly of the works of Lenin and Stalin and their collaborators and were authored by them as leaders of the Communist Party of the Soviet Union, the Communist International, and the Soviet State. Moreover, they are of a relatively current character

and, as is established in the case of the *History of the Communist Party of the Soviet Union (B)* (Pet. Ex. 330), issued in 1939, it is reasonable to conclude that they were designed to promulgate the doctrines of Marxism-Leninism throughout the world, and primarily for application outside the Soviet Union, where state power was already in the hands of the Communists.<sup>8</sup>

In the summaries of, and quotations from, the "Classics" which follow we have endeavored to hold closely to the essence of the material being analyzed. We are aware that in excerpting passages from a document, and particularly from a book, the question often arises as to whether the excerpt is out of context and standing alone conveys a meaning contrary to the sense of the document. The excerpts and paraphrases of the documents used herein in our judgment are representative of the whole tenor of the writing from which they are taken and reflect the essence of the document, and Marxism-Leninism, in each instance.

We might indicate at this juncture that there may be, and probably are, those who subscribe to portions of Marxism-Leninism, e.g., the labor theory of values and public ownership of the means of production, and yet would [fol. 2415] advance toward their objective within the prin-

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<sup>8</sup> This is borne out even with reference to Lenin's earlier works by Stalin's statement in *Problems of Leninism* refuting a "national" as opposed to an "international" definition of Leninism: "Have Lenin's works, such as *Imperialism; State and Revolution*, *The Proletarian Revolution and the Renegade Kautsky*, and *'Left-Wing' Communism: an Infantile Disorder*, etc., significance only for Russia and not for all imperialist countries in general? Is not Leninism the generalisation of the experience of the revolutionary movement of all countries? Are not the foundations of the theory and tactics of Leninism suitable and obligatory for the proletarian parties of all countries? Was Lenin wrong when he said that: 'Bolshevism can serve as a model of tactics for all'? . . . Was Lenin wrong when he spoke of the 'international significance [My italics. —J. S.] of the Soviet power and of the foundation of Bolshevik theory and tactics'? (*'Left-Wing' Communism*.) \* \* \* How can this nationally restricted definition of Leninism be reconciled with internationalism?" (Pet. Ex. 138, pp. 8-9.)

ciples of the Constitution.<sup>8a</sup> But that is not this respondent. It at no time asserts it embraces only isolated portions of Marxism-Leninism, such as those just specified. It espouses Marxism-Leninism in its totality and then proceeds to the position that in so doing it nevertheless embraces the Constitution and is an independent, domestic political organization.

As the evidence now to be discussed will show, respondent's adherence to Marxism-Leninism and its operations on the basis thereof exclude adherence to the Constitution as the Party proclaims.

Historically it was in the middle of the nineteenth century that Karl Marx and Frederick Engels developed what became known as Marxism. This is a form of socialism, a basic tenet of which is the ownership by the state of all the means of production and distribution. According to Marx, all hitherto existing society consisted of antagonistic classes, the principal one being the bourgeoisie or capitalist class, which, as a result of owning privately the means of production, exploited the propertyless working class. Marx announced particular interest in the propertyless factory workers whose numbers had increased as a result of industrialization then taking place in Europe. These factory workers he designated as the proletariat. Marx was influenced by the dynamic theories of the German philosopher Hegel, and applied Hegel's dialectics to the materialistic concepts of the Greek philosophers and developed a system which he called dialectical materialism. This is a theory of reality assuming continuous transformation of matter and dynamic interconnection of things and concepts and implies social transformation through socialism toward a classless society. Marx came to the conclusion that the only true value was the labor of the industrial working class. It was his thesis that capitalism had to expand in order to continue to exist and, as it spread, the proletariat would correspondingly increase in numbers. According to his conception of history, capitalism contained,

<sup>8a</sup> And, as former Chief Justice Stone once indicated, the Constitution does have readily ascertainable principles. *Schneiderman v. United States*, 320 U.S. 118, 181. It is no vague document.



the seeds of its own destruction and consequently it was inevitable that the classless state of society which he designated as communism would ultimately come about. In order to expedite this, he theorized, it was necessary that the proletarian class, which would be greater in numbers than the bourgeoisie, be organized and be given leadership by a political party of all the workers of the world. The objective of this party would be to bring capitalism to an end and substitute for it a dictatorship of the proletariat in a socialist state. Eventually, according to his [fol. 2416] theory, the dictatorship of the proletariat would not be necessary because the state would wither away as soon as classes disappeared and its citizens had been conditioned to living in a one-class society.

Two of the most basic considerations of Marx which inhere in Marxism-Leninism as developed by Lenin and Stalin and their collaborators are the concept of an international class struggle and the world-wide character of the revolution. Illustrative of this, *The Communist Manifesto* (Pet. Ex. 31) proclaimed: "The history of . . . society is the history of class struggles." (*Ibid.*, p. 9.) "The bourgeoisie has played a most revolutionary rôle in history." (*Ibid.*, p. 11.) But "not only has the bourgeoisie forged the weapons that bring death to itself; it has also called into existence the men who are to wield those weapons . . . the proletarians." (*Ibid.*, p. 15.) The proletarians have become organized into a class and consequently into a political party. Of all the classes opposing the bourgeoisie, the proletariat alone is a really revolutionary class. The Communists are a proletarian party whose aim is the conquest of political power by the proletariat. The proletariat will become the ruling class and will use its political supremacy to wrest all capital from the bourgeoisie. The measures used to do this will be different in different countries. The Communist everywhere must support every revolutionary movement against the existing order of things. Their ends can only be attained by the forcible overthrow of all existing social conditions. Workingmen of all countries are exhorted to unite for the Communist revolution. (See *ibid.* pp. 16-31.)



Lenin adapted Marxism to Russian revolutionary purposes.<sup>9</sup> He proceeded to implement it in a way that gave it a practical turn. He concluded that for the success of the proletarian revolution two things were most important: rigidity of organization and flexibility of policy. Organizationally, one of his first postulates was the necessity of creating a homogeneous group of disciplined professional revolutionists, among whom no factionalism or dissent would be tolerated, as a nucleus for the party of the proletariat. It should be noted that the Communist Party was formed in 1898 in Russia. Lenin's group therein, the Bolsheviks, obtained control of that party in Russia primarily because they were an intransigent group permitting no deviation or compromise.

[fol. 2417] Stalin gave the Marxist-Leninist ideas a practicality which developed somewhat differently from Marxist theoretical schemes. Marx, Lenin and Stalin, as the record reveals, became the supreme authorities of what is known as Marxism-Leninism and after Lenin's death Stalin became the supreme interpolator of Lenin.<sup>10</sup> All postulated the revolution on a worldwide basis. Lenin, and after him Stalin, proclaimed that it was not necessary to wait until the proletariat throughout the entire world was ready for a revolution, but that the attack against the capitalist world rightfully began by breaking its chain at the weakest link, which proved to be Russia. The Communists in Russia having succeeded, they then sought help from the proletariat throughout the world to consolidate and support their victory. They also proceeded to foment and aid revolution in any part of the world where it had a chance of being successful and pursuant to this purpose organized the present world Communist movement and as its organizational apparatus, the Communist International, which served as such until 1943. (See the next section of this Report.)

<sup>9</sup> See foreword to *What Is To Be Done?* (Pet. Ex. 417) by Alexander Trachtenberg, one of respondent's leaders and manager of International Publishers.

<sup>10</sup> Currently, Marxism-Leninism might be more appropriately termed Leninism-Stalinism.

In the writings of Lenin and Stalin, the international and revolutionary aspects of Marxism are stressed and developed. In *State and Revolution* (Pet. Ex. 139), Lenin objects to the "chauvinism" of those "leaders of Socialism" who would water down Marx's doctrine by limiting it to single states. Speaking of the Russian Revolution of 1917, he states: "This revolution can be understood in its totality only as a link in the chain of Socialist proletarian revolutions called forth by the imperialist war." (*Ibid.*, pp. 5 and 6.), "A Marxist is one who *extends* the acceptance of class struggle to the acceptance of the *dictatorship of the proletariat*." (*Ibid.*, p. 30.) In *Foundations of Leninism* (Pet. Ex. 121), Stalin said that Leninism is not merely a Russian but an international phenomenon (p. 9); and that the Russian Communists were impelled by the whole situation, domestic and foreign, to transfer the struggle to the international arena (p. 17). This is also in Stalin's definition of Leninism (*Problems of Leninism*, Pet. Ex. 138, pp. 7-9; see also p. 19). The movement called for in Marxism-Leninism is regarded by its founders and chief protagonists as an internationalism which must operate with common theory and strategy and tactics in all countries. That those working for the ultimate ends of the movement must work in unison and in one cohesive organization on a world-wide basis is expressed clearly in the *Theses and Statutes of the Third (Communist) International* (Pet. Ex. 8, p. 67), discussed *infra*, and suffuses the "Classics" throughout. It is not a tenet that can be accepted here and rejected there. Like a fast dye, it colors every portion of the movement and cannot be eradicated because it is of its essence.

[fol. 2418] It would burden this section unduly to quote *in extenso* the references in the "Classics" to the international and revolutionary nature of Marxism-Leninism and the interrelation of the Communist Parties in all countries which it requires. These references are deemed significant to illustrate this: *Foundations of Leninism* (Pet. Ex. 121, pp. 17-19; p. 45, last paragraph, and p. 46); *History of the Communist Party of the Soviet Union (B)* (Pet. Ex. 330, pp. 273-275); and *State and Revolution* (Pet. Ex. 139, pp. 5-6).

Another factor of Marxism-Leninism which pervades the "Classics" is the dominant position of the Soviet Union. After the successful revolution in Russia, Stalin points out (*Problems of Leninism*, Pet. Ex. 138, p. 64) that for an ultimate victory of socialism in the world, the protection of the Russian victory by workers of all countries is necessary. In *Foundations of Leninism* (Pet. Ex. 121, p. 19) he quotes Lenin:

"History has now confronted us [i.e., the Russian Marxists—J. S.] with an immediate task which is the *most revolutionary* of all the *immediate* tasks that confront the proletariat of any country. The fulfilment of this task, the destruction of the most powerful bulwark, not only of European, but also of Asiatic reaction, would make the Russian proletariat the vanguard of the international revolutionary proletariat.'...

"In other words, the centre of the revolutionary movement was bound to shift to Russia.

"As we know, the course of the revolution in Russia has more than vindicated Lenin's prediction.

"Is it surprising, after all this, that a country which has accomplished such a revolution and possesses such a proletariat should have been the birthplace of the theory and tactics of the proletarian revolution?

"Is it surprising that Lenin, the leader of this proletariat, *became the creator of this theory and tactics and the leader of the international proletariat?*" (Pet. Ex. 121, p. 19, emphasis added.)

The international position held by the Soviet Union in Marxism-Leninism is further brought out in *The United Front*, written in the late 1930's, which sets forth as the test of true adherence to the cause one's attitude toward the Soviet Union. The following is among the statements contained therein:

[fol. 2419] "... You cannot carry on a real struggle against fascism if you do not render all possible assistance in strengthening the *most important buttress* of this struggle, the Soviet Union. You cannot carry

on a serious struggle against the fascist instigators of a new world blood bath, if you do not render undivided support to the U.S.S.R., a *most important factor* in the maintenance of international peace. You cannot carry on a real struggle for socialism in your own country, if you do not oppose the enemies of the Soviet State, where this socialism is being fulfilled by the heroic efforts of the working people. . . . " (Pet. Ex. 149, p. 279.)

Whereas in the Soviet Union the Party is the core of the movement, in the world scheme the USSR becomes the center.<sup>11</sup> As such, it must be protected, and from it will emanate leadership which will direct and hold together the Party in other countries. This is expressed in *Strategy and Tactics of the Proletarian Revolution*:

"In the struggle to defend against fascism the bourgeois-democratic liberties and the gains of the toilers, in the struggle to overthrow fascist dictatorship, the revolutionary proletariat prepares its forces, strengthens its fighting contacts with its allies and directs the struggle toward the goal of achieving real democracy of the toilers—Soviet power.

"The further consolidation of the Land of the Soviets, the rallying of the world proletariat around it, and the mighty growth of the international authority of the Communist Party of the Soviet Union, the turn toward revolutionary class struggle which has set in among the Social-Democratic workers and the workers organized in the reformist trade unions, the increasing mass resistance to fascism and the growth of the revolutionary movement in the colonies, the decline of the Second International and the growth of the Communist International, are all accelerating and will con-

<sup>11</sup> This is illuminated by a statement of the Cominform in 1948 (Pet. Ex. 345) relating to its resolution execrating Tito, that all Communist Parties announced agreement, including respondent, that in displaying anti-Soviet Union tendencies Tito deviated from the principles of Marxism-Leninism. This indicates that to break with the Soviet Union is construed by respondent as a break with Marxism-Leninism.

*time to accelerate the development of the world Socialist revolution."* (Pet. Ex. 343, p. 81, emphasis added.)

[fol. 2420] It is declared that if the Soviet Union army is engaged in war to defend socialism, "the Communists will call upon all toilers to work, with all their means at their disposal and at any price, for the victory of the Red Army over the armies of the imperialists." (Pet. Ex. 343, p. 96.)

Thus allegiance to the Soviet Union assumes considerable proportions in the "classics" of Marxism-Leninism.<sup>12</sup> Its role as the leader of a world revolution is stressed. At all times, loyalty and assistance are due it in any conflict which may arise between it and any "imperialist" power.

"Imperialism" as an historical epoch is defined by Lenin as "capitalism in transition, or more precisely, as moribund capitalism" (Pet. Ex. 140, p. 126); as "a world system of financial enslavement and colonial oppression of the vast majority of the population of the earth by a handful of 'advanced' countries." (Pet. Ex. 121, p. 35.) Among the countries which Lenin and Stalin designate as imperialistic are Great Britain, France, Germany, Italy, Japan, and the United States.<sup>13</sup>

Various characteristics are ascribed by Lenin and Stalin to capitalism in the epoch of imperialism which are said to result in imperialism being "the eve of the socialist revolution." (Pet. Ex. 121, p. 34.) These stated characteristics include the "omnipotence of the monopolist trusts and syndicates, of the banks and the financial oligarchy, in the industrial countries"; the "frenzied struggle for monopolist possession" of foreign territory; and, "the most barefaced exploitation and the most inhuman oppression

<sup>12</sup> We use "allegiance to the Soviet Union" here in a nontechnical sense, i.e., as not to include formal requirements of citizenship. A later section of this Report is devoted to "Allegiance."

<sup>13</sup> As our findings herein will show, the United States is given particular attention in Marxism-Leninism as the principal and mightiest imperialist nation and, therefore, the main enemy of the proletarian revolution.



of hundreds of millions of people inhabiting vast colonies and dependent countries . . . to squeeze out super-profits." (*Ibid.*, pp. 13-14.) Although picturing imperialism as capitalism in a dying state and containing the seeds of its own destruction, Marxism-Leninism advocates that the replacement of imperialism by the dictatorship of the proletariat is "impossible without a violent revolution." (Pet. Ex. 139, p. 20.)

[fol. 2421] Using these theories on imperialism devised by Lenin and Stalin, Marxism-Leninism has as one of its primary objectives to hasten "overthrowing imperialism and achieving the dictatorship of the proletariat." (Pet. Ex. 121, p. 108.) It seeks to convince the working class that under imperialism they will "linger in misery as of old and sink lower and lower" unless they take the alternative of a working class revolution (*ibid.*, p. 13); that "imperialism subjects large masses of the proletariat of all countries—from the centers of capitalist might to the most remote corners of the colonial world—to the dictatorship of the finance-capitalist plutocracy," thus creating the necessity of uniting the workers of all countries "in a single international army of the proletariat . . . on the platform of Communism." (Pet. Ex. 125, pp. 5-6.)

It is also evident from the "Classics" that as the Soviet Union is to be considered the leader of the world proletariat in the class war, so the United States takes on a special importance as the mightiest of the "imperialist" powers, the arch enemy of the proletariat. Lenin, in *Imperialism* (Pet. Ex. 140, p. 125), states: "In the United States, economic development in the last decades has been even more rapid than in Germany, and *for this very reason* the parasitic character of modern American capitalism has stood out with particular prominence." Stalin points out in *Foundations of Leninism* (Pet. Ex. 121, pp. 55-56) that conditions in the United States had changed since the days of Marx and that this country could no longer be considered one in which there could be a "peaceful evolution of bourgeois democracy into a proletarian democracy." The United States has become definitely "imperialistic"<sup>14</sup> and "the law

<sup>14</sup> The record is replete with evidence that today the Soviet Union, foreign Communist Parties, and respondent consider the United States as the leading imperialist power.



of violent proletarian revolution," the law of the smashing of government instrumentalities as a preliminary of the revolution become applicable to it. This quotation from Lenin in this connection reveals how strongly the Soviet Union felt that action was required in this country:

"'Today,' said Lenin, in 1917, in the epoch of the first great imperialist war, this qualification made by Marx is no longer valid. Both England and America, the greatest and the last representatives—in the whole world—of Anglo-Saxon "liberty", in the sense that militarism and bureaucracy were absent, have slid down entirely into the all-European, filthy, bloody morass of military-bureaucratic institutions to which everything is subordinated and which trample everything, underfoot. Today, both in England and in [fol. 2422] America, the "preliminary condition for every real people's revolution" is the smashing, the destruction of the "ready-made state machine" (brought in those countries, between 1914 and 1917, to general "European" imperialist perfection).' (*Selected Works*, Vol. VII, p. 37.)" (Pet. Ex. 121, p. 56.)

A *Resolution on American Question* (Pet. Ex. 43), issued by the Communist International in 1929, asserts that: "The United States of America . . . has developed into the mightiest imperialist power"; and it specifies "The task of the Workers (Communist) Party is to form a broad united front to intensify the struggle against American imperialism." (See also Tr. 619, 667-668.) Specific attention is directed to this aspect of the approach to be used in applying Marxism-Leninism to the United States by Soviet leader Dimitroff in his work *The United Front* (Pet. Ex. 149, pp. 41-43) where an "anti-fascist" party is urged. We find, at page 43, some revealing language: "Our comrades in the United States acted rightly in taking the initiative for the creation of such a party . . . We should develop the most widespread movement for the creation of such a party, and take the lead in it." The *Theses and Statutes of the Third (Communist) International* (Pet. Ex. 8) has this to say:

"The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work lawfully, [sic] a combination of lawful and unlawful work is absolutely necessary." (Pet. Ex. 8, p. 28.)

Further developing the objective of overthrowing imperialism, Marxism-Leninism declares that imperialism inevitably leads to wars brought on by capitalists seeking more power and more territories. From this, two principles are advanced, namely, the necessity of struggle against imperialist wars, and that imperialist wars, which [fol. 2423] will take place regardless of the efforts to prevent them, create "favourable conditions . . . for a direct onslaught upon the citadels of capitalism."<sup>15</sup> (Pet. Ex. 121, p. 15.)

The necessity of working to prevent imperialist wars has as a primary aim the defense of the Soviet Union since Marxism-Leninism theorizes that "international imperialism . . . could under no circumstances, under no possible conditions, live side by side with the Soviet republic . . . conflict is inevitable." (Pet. Ex. 138, p. 19.) The original theory of Marx of the antagonism between the bourgeois, or capitalist class, and the proletarian, or working class, is developed by Lenin and Stalin as the division of the world into "a united world front of revolution against the world front of imperialism" (Pet. Ex. 121, p. 34) and has been applied in the world Communist movement to align various countries and Communist Parties in a "camp of peace and democracy" headed by the Soviet Union to op-

<sup>15</sup> Pertinent facts in this respect are contained in our findings under the heading "World Communist Movement," particularly at folios 2461-2462, 2471-2478.

pose the "camp of imperialism" of which the United States is treated as the principal nation.<sup>16</sup>

In addition to the program for the struggle against imperialist wars (in order to prevent war against the Soviet Union while it consolidates its gains, increases its strength; and prepares to further the proletarian revolution), Marxism-Leninism also sets forth the duty to aid and support certain wars. The two programs are contained in the concept of "just and unjust wars." So-called "just" wars which Marxism-Leninism holds must be aided and supported are those "to liberate the people from capitalist slavery, or, . . . to liberate colonies and dependent countries from the yoke of imperialism." (Pet. Ex. 330, pp. 167-168.) The "unjust" wars are the wars engaged in by the so-called imperialist countries and include a war against the Soviet Union. The imperialist wars are characterized as those "waged to conquer and enslave foreign countries and foreign nations." (Pet. Ex. 330, p. 168.)

[fol. 2424] As indicated by the foregoing, Marxism-Leninism, as it pertains to the overthrow of "imperialism" and the establishment of the dictatorship of the proletariat, includes both theory and action, specifically pointing out that "revolutionary slogans and resolutions are not worth a farthing if they are not backed by deeds." (Pet. Ex. 121, p. 25.) An important "deed" laid down is the policy "of transforming the imperialist war into civil war" (Pet. Ex. 121, p. 25) or of waging a resolute struggle against "unjust" imperialist wars "to the point of revolution and the overthrow of one's own imperialist government."<sup>17</sup> (Pet. Ex. 330, p. 168.) The

<sup>16</sup> Respondent's witness Aptheker testified to the effect it is now held that because the "forces of peace" have become so strong it is possible, notwithstanding the existence of imperialism, to "really prevent a world war." (Tr. 13437.) There is no showing of any change in the doctrine regarding the use of the "favourable conditions" resulting from any so-called imperialist war, world-wide or otherwise, for an "onslaught upon the citadels of capitalism." Thus, when "imperialists" are "engrossed in war among themselves," they are unable "to concentrate their forces against . . . the proletariat." (Pet. Ex. 121, p. 94.)

<sup>17</sup> Marxism-Leninism recognizes the difficulties of this and points out "the necessity of a stubborn, continuous and determined struggle against the imperialist chauvinism of the 'Socialists' of the ruling

so-called "imperialist" wars, therefore, create the "favourable condition" of an opportunity for civil war and overthrow of the "imperialist" government.

The position taken by the "Classics" on the questions of minorities and colonials is also basic to Marxism-Leninism and is primarily a contribution of Lenin and Stalin.<sup>18</sup> (See Pet. Ex. 121, pp. 76-82; Pet. Ex. 138; Pet. Ex. 140; Pet. Ex. 343, pp. 63-65.) The founders of the movement were not concerned with purely local conditions in Russia. In *Foundations of Leninism* (Pet. Ex. 121) it is clear that the national problem is part of the general problem of the proletarian revolution to be used for that purpose but only to the extent that it is of advantage to the revolution. It is stated there that "support must be given to such national movements as tend to weaken, to overthrow imperialism, and not to strengthen and preserve it. Cases occur when the national movements in certain oppressed countries come into conflict with the interests of the development of the proletarian movement. In such cases support is, of course, entirely out of the question." (Pet. Ex. 121, p. 79.) This also appears from *Strategy and Tactics* (Pet. Ex. 343, pp. 63-65).

Equally basic with the international and revolutionary character of Marxism-Leninism is the tenet of the dictatorship of the proletariat. In view of the divergence of testimony of witnesses for petitioner and those of respondent concerning the meaning and application of this tenet, we have taken pains to ascertain its real character.

[fol. 2425] Lenin states in *State and Revolution*:

"The replacement of the bourgeois by the proletarian state is impossible without a violent revolution. . . ." (Pet. Ex. 139, p. 20.)

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nations (Great Britain, France, America, Italy, Japan, etc.), who do not want to fight their imperialist governments, who do not want to support the struggle of the oppressed peoples in 'their' colonies for emancipation from oppression, for succession." (Pet. Ex. 121, p. 84.)

<sup>18</sup> Implementation of this concept by respondent and the world Communist movement are discussed in the next section hereof.

In *Problems of Leninism* it is stated:

"The Party is the main guiding force within the system of the dictatorship. . . ." (Pet. Ex. 138, p. 32.)

"Without the Party as the main leading force, a dictatorship of the proletariat at all durable and firm is impossible." (*Ibid.*, p. 33.)

"Here in the Soviet Union, *in the land of the dictatorship of the proletariat*, the fact that not a single important political or organizational question is decided by our Soviet and other mass organizations without directions from the Party must be regarded as the highest expression of the leading role of the Party. *In this sense* it could be said that the dictatorship of the proletariat is *in essence* the 'dictatorship' of its vanguard, the 'dictatorship' of its Party, as the main guiding force of the proletariat. . . ." (*Ibid.*, p. 34, emphasis added.)

In *Foundations of Leninism* Stalin states:

"The question of the proletarian dictatorship is above all a question of the main content of the proletarian revolution. The proletarian revolution, its movement, its scope and its achievements acquire flesh and blood only through the dictatorship of the proletariat. The dictatorship of the proletariat is the instrument of the proletarian revolution, its organ, its most important mainstay, brought into being for the purpose of, firstly, crushing the resistance of the overthrown exploiters and consolidating the achievements of the proletarian revolution, and, secondly, carrying the proletarian revolution to its completion, carrying the revolution to the complete victory of socialism. The revolution can vanquish the bourgeoisie, can overthrow its power, without the dictatorship of the proletariat. But the [fol. 2426] revolution will be unable to crush the resistance of the bourgeoisie, to maintain its victory and to push forward to the final victory of socialism unless, at a certain stage in its development, it creates a



special organ in the form of the dictatorship of the proletariat as its principal mainstay. (Pet. Ex. 121, p. 47.)

"The fundamental question of revolution is the question of power.' (Lenin.) Does this mean that all that is required is to assume power, to seize it? No, it does not mean that. The seizure of power is only the beginning. For many reasons the bourgeoisie that is overthrown in one country remains for a long time stronger than the proletariat which has overthrown it. Therefore, the whole point is to retain power, to consolidate it, to make it invincible. What is needed to attain this? To attain this it is necessary to carry out at least the three main tasks that confront the dictatorship of the proletariat 'on the morrow' of victory:

"(a) to break the resistance of the landlords and capitalists who have been overthrown and expropriated by the revolution, to liquidate every attempt on their part to restore the power of capital;

"(b) to organize construction in such a way as to rally all the labouring people around the proletariat, and to carry on this work along the lines of preparing for the liquidation, the abolition of classes;

"(c) to arm the revolution, to organize the army of the revolution for the struggle against foreign enemies, for the struggle against imperialism.

"The dictatorship of the proletariat is needed to carry out, to fulfil these tasks." (Pet. Ex. 121, p. 48.)

The *History of the Communist Party of the Soviet Union* (B) calls the doctrine of the proletarian revolution and the dictatorship of the proletariat the "very core of Marxism." (Pet. Ex. 330, p. 21.)

In *Foundations of Leninism* (Pet. Ex. 121) the origin of the dictatorship of the proletariat is thus stated:

[fol. 2427] "Briefly: the dictatorship of the proletariat is the rule—unrestricted by law and based on force—of the proletariat over the bourgeoisie, a rule enjoying the sympathy and support of the labouring and exploited masses. (*The State and Revolution.*)



"From this follow two main conclusions:

"*First conclusion: The dictatorship of the proletariat cannot be 'complete' democracy, democracy for all, for the rich as well as for the poor; the dictatorship of the proletariat 'must be a state that is democratic in a new way—for\* the proletarians and the propertyless in general—and dictatorial in a new way—against\* the bourgeoisie. . . .*' (Lenin, *Selected Works*, Vol. VII, p. 34.) . . . \* My italics.—J.S." (Pet. Ex. 121, p. 53.)

"*Second conclusion: The dictatorship of the proletariat cannot arise as the result of the peaceful development of bourgeois society and of bourgeois democracy; it can arise only as the result of the smashing of the bourgeois state machine, the bourgeois army, the bourgeois bureaucratic machine, the bourgeois police.*" (*Ibid.*, p. 54, emphasis added.)

As shown above, the concept of the dictatorship of the proletariat postulates a rigid Party organization with a hard core of dedicated workers. The ends and objectives of Marxism-Leninism are to be effectuated through a vanguard Party operating upon an organizational principle known as "democratic centralism."

The *History of the Communist Party of the Soviet Union (B)* (Pet. Ex. 330) states that in July and August 1917, prior to the successful October Revolution, the CPSU adopted "new Party rules" providing that "all Party organizations shall be built on the principle of *democratic centralism*," (*ibid.*, p. 198) which provided *inter alia* that all directing bodies of the Party shall be elected; that they give periodic reports to Party organizations; that there be strict Party discipline and the subordination of the minority to the majority; and that all decisions of higher bodies shall be absolutely binding on lower bodies and on all Party members.

*Strategy and Tactics of the Proletarian Revolution* (Pet. Ex. 343) states:

"*The Party is the vanguard of the working class, and consists of the best, most class-conscious, most active*

and most courageous members. It incorporates the whole body of experience of the proletarian struggle. Basing itself upon the revolutionary theory of Marxism [fol. 2428] and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action. It is a revolutionary organization, bound by iron discipline and strict revolutionary rules of democratic centralism, which can be carried out owing to the class-consciousness of the proletarian vanguard, to its loyalty to the revolution, its ability to maintain inseparable ties with the proletarian masses and to its correct political leadership which is constantly verified and clarified by the experiences of the masses themselves." (Pet. Ex. 343, p. 62.)

In the organizational structure of the dictatorship, the Party is the "main directing force," "whose mission it is to lead all these mass organizations" and "Without the Party as the main leading force, a dictatorship of the proletariat at all durable and firm is impossible." (Pet. Ex. 138, p. 33.)

"Democratic centralism" is stated by the witnesses for respondent to represent the highest form of democracy in that it provides that all decisions and policies of the Party are determined by the membership and that authority flowed up from this membership through intermediate local and regional committees to the Central Committee. A decision once made, however, would be binding on all members. Witnesses for petitioner testified that "democratic centralism" was theoretically a two-way process by which authority flowed upward from Party cells through intermediate local or regional committees to the top and discipline flowed downward from the same channels. However, they stated that in practice the double process is reduced to a single process in which discipline flows downward with limited right of discussion in the lower echelons on matters of local tactics.<sup>19</sup>

<sup>19</sup> As witness Kornfeder states it, the Party's basic form of organization is a super-centralized political party with a high degree of discipline. He describes it as a military type of political organi-

[fol. 2429] This policy is expressed in the *Programme of the Communist International*:

"This international Communist discipline must find expression in the subordination of the partial and local interests of the movement to its general and lasting interests and in the strict fulfillment, by all members, of the decisions passed by the leading bodies of the Communist International." (Pet. Ex. 125, p. 84.)

The idea behind democratic centralism is best expressed by Stalin in *Foundations of Leninism*, where it is stressed that discipline is considered vital both in an organizational sense and in adherence to doctrine. Deviation<sup>20</sup> from doctrine and practice is abjured and permitted only in the area of minor tactics on local problems:

"The achievement and maintenance of the dictatorship of the proletariat is impossible without a party which is strong by reason of its solidarity and iron discipline. But iron discipline in the party is inconceivable without unity of will, without complete and absolute unity of action on the part of all members of the Party. . . ." (Pet. Ex. 121, pp. 119-121.)

As stated by Stalin, the existence of factions is incompatible either with the Party's unity or its iron discipline. He quotes Lenin:

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zation with an established chain of command, permitting lower units considerable leeway in discussing local tactical problems. He states that he was taught that the general staff or the general headquarters of the organization was the Communist International in Moscow. At the time of which he speaks, he says that the Communist Parties of all countries were affiliated with the Communist International. Witness Philbrick stated, when asked whether a member of his group could refuse to accept the decision of the Cominform and still continue membership in the Communist Party of the United States, that such member could not continue as a member of the Party. Witness Lautner says that it was a breach of democratic centralism for any Communist Party anywhere to refuse to follow the dictates of the Soviet Union.

<sup>20</sup> "Nondeviation" by respondent is treated later in a separate section.

“‘In the present epoch of acute civil war’, says Lenin, ‘a Communist Party will be able to perform its duty only if it is organised in the most centralised manner, only if iron discipline bordering on military discipline prevails in it, and if its Party centre is a powerful and authoritative organ, wielding wide powers and enjoying the universal confidence of the members of the Party’. (Selected Works, Vol. X, p. 204.)” (*Ibid.*, p. 120.)

With the organizational structure thus indicated, the “Classics” then provide both general directions and strategic and tactical rules for the attainment of the objectives contemplated by Marxist-Leninist doctrine. While the ends to be reached are fixed, the manner and methods of reaching them, it will be seen, are flexible. What these are appear most concisely in *Strategy and Tactics of the Proletarian Revolution* (Pet. Ex. 343). In summary, it states [fol. 2430] the following. The strategy and tactics were elaborated in the period of proletarian revolution when the question of the overthrow of the bourgeoisie became a question of immediate practice. Lenin brought into the light of day the ideas of Marx and Engels on tactics and strategy and developed them further into a “system of rules and . . . principles for the leadership of the class struggle of the proletariat.” (Pet. Ex. 343, p. 8.)<sup>21</sup> Communists of every country must adapt themselves to the peculiar features of the economics, politics, culture and national composition of the country in which they are operating. As long as national and state differences exist among peoples and countries, the unity of international tactics of the Communist working class movement requires, not the elimination of variety, but an adaption of the “fundamental principles of Communism (Soviet power and the dictatorship of the proletariat)” to the national and state differences. (*Ibid.*, p. 15, emphasis added.) The vanguard of the working class having been won over, the next step is to seek the transition or approach to the proletarian revolution. The revolutionary class must

<sup>21</sup> This same statement is made by Stalin in *Foundations of Leninism*. The statement is also there made that “The strategy and tactics of Leninism constitute the science of leadership of the revolutionary struggle of the proletariat.” (Pet. Ex. 121, p. 89.)

be able to master all forms of social activity and must be ready to pass from one form to another with the utmost expedition. The tactics of the Bolsheviks were correct because they were the only international tactics and did everything possible in one country for the development, support and stirring up of the revolution in all countries. "Bolshevism has helped in a practical way to develop the proletarian revolution in Europe and America." (*Ibid.*, p. 17.) The world proletarian revolution has been assisted, accelerated and supported by the victory of the proletariat in Russia. The objective elements of the working class movement are the economic development of the country, the development of capitalism, the disintegration of the old government, the spontaneous movements of the proletariat. The collision of classes proceeds irrespective of the will of the proletariat. But the subjective element, the reflection in the minds of the proletariat of these processes, is the subject of the directing influences of strategy and tactics. The theory of Marxism postulates that the fall of the bourgeoisie, the seizure of power by the proletariat and the replacement of capitalism by socialism are inevitable. Strategy is the determination of the direction of the main blow of the proletariat at a given stage of the revolution and it changes with the transition of the revolution from one stage to another and remains unchanged throughout the duration of a given stage. Tactics are the determination [fol. 2431] of the line of conduct of the proletariat during the ebb and flow of the movement, changing the forms of struggle and its slogans. Thus, in the Russian Revolution changes were made as the struggle progressed; strikes, boycotts, slogans were used and varied along with the forms of organization, a worker's party operated more or less openly, as the immediate situation required. In the earlier phases the Party was compelled to resort to tactics of retreat. When the revolution ebbed, operations were less open and the Party went underground; and cultural work and the organizations "permitted by law" took the place of revolutionary mass organizations. (*Ibid.*, p. 26.) The same was true during the subsequent stages of the revolution. The successful struggle for the dictatorship of the proletariat presupposes the existence in every country of a com-



compact Communist Party, hardened in the struggle, disciplined, centralized and closely linked up with the masses. The Party is a revolutionary organization, with these fundamental strategic aims: It must extend its influence over the majority of the members of its own class, including working women and youth. It must secure predominant influence in the broad mass proletarian organizations, e.g., trade unions, factory councils, cooperatives, sports and cultural organizations. It is particularly important to win over the trade unions.<sup>22</sup> Leadership of wide sections of the toiling masses should be acquired by the proletariat and the membership of the middle classes of the peasantry must be secured. In determining this line of tactics, each national Communist Party must take into account the concrete internal and external situation, the correlation of class forces, the degree of stability and strength of the bourgeoisie and fit slogans and methods of struggle to the circumstances of the particular country. Demands and slogans must be lent to the revolutionary aim of capturing power and overthrowing bourgeois capitalist society. The Party is to utilize the daily needs and struggles of the working class as a starting point from which to lead the working class to the revolutionary struggle for power. When the ruling class is disorganized, propaganda in favor of increasingly transitional slogans and mass action should be used. Strikes and armed demonstrations should be used, as well as intensified revolutionary work in the army and the navy. When conditions are right, it is dangerous to fail to start rebellion. When the revolutionary tide is at ebb, partial slogans and demands should be reverted to which correspond with the everyday needs of the workers. United front tactics should then be used. In this period of marking time, demands and slogans should be made in such spheres as labor, local politics and world politics, e.g., the attitude toward the USSR, the struggle against "imperialism" and the war danger, and systematic preparation for the fight against imperialist war. Also, systematic work must be carried on among the proletarian and peasant youth; and, in imperialist countries, Communist Parties must impair the war effort against

<sup>22</sup> The Party's application of this is discussed at fols. 2539-2544, *infra*.



[fol. 2432] colonies. The further consolidation of the Land of the Soviets, the mighty growth of the international authority of the Communist Party of the Soviet Union, the growth of the Communist International are all accelerating the development of the world Socialist revolution. The capitalist world is entering a period of sharp clashes. The united front of the working class must be established. The victory of the revolution has to be prepared for by a strong proletarian revolutionary party. *Should an imperialist war break out, the interest of the workers of all countries demands that the defense of the Soviet Union be considered paramount.*<sup>23</sup>

From this resume, it becomes apparent that the "rules" for reaching the goal have within them tactics for short range and long range action and that they are intended for more than local application. In addition, there has been provided an elasticity which makes them applicable under a variety of circumstances. The manner and extent of their application by the CPUSA is a factor to be considered in determining whether the United States Party is a part of a world-wide movement and whether it is dominated and controlled by the Soviet Union.

One of the primary tactical principles set forth in Marxism-Leninism, is that of the united front. An entire volume, Dimitroff's *The United Front* (Pet. Ex. 149) is devoted to it and its value is stressed throughout a number of the "Classics." This tactical principle is used at the local, national, and international levels and involves such issues as working conditions, social grievances, fascism, war and peace. It is a cardinal rule that this tactic must be utilized to further Communist objectives and never in such a way as to bolster capitalism. Dimitroff in his classic stresses that in utilizing this tactic Communists must not abandon the struggle "against theories and viewpoints hostile to the working class," pointing out that "the cause of the united front will not suffer from such a struggle; it stands only to gain from it." (*Ibid.*, p. 235.) He further makes clear that:

"It should never be forgotten that . . . when we carry on a resolute struggle for the defense of democratic

<sup>23</sup> The activities of respondent in relation to World War II illustrate its application of this principle, see, e.g., "Nondeviation."

rights and liberties against reaction and fascism, we do so as Marxists, as consistent proletarian revolutionaries, and not as bourgeois democrats and reformists. Where we came forward in defense of the national interests of our own people, . . . their independence and liberty, we do not become nationalists or bourgeois patriots; we do so as proletarian revolutionaries. . . . When we come forward in defense of religious freedom, . . . we do not retreat from our Marxist outlook, which is free of all religious superstitions.

" . . . when participating in joint action with other parties and organizations of the working people against [fol. 2433] the common enemy, and fighting for the vital interests and democratic rights of the working people; and for peace and liberty, the Communists do not lose sight of the historic need for the revolutionary overthrow of capitalism, which has outlived its day, and for the achievement of socialism. . . .

" . . . We must not allow a situation where 'you cannot see the wood for the trees.' We must not allow practice to become divorced from theory, a gap to develop between the fulfillment of the urgent tasks of today, and the further perspectives and aims of the working class struggle. . . ." (Pet. Ex. 149, pp. 235-236.)

The simultaneous adoptions of united front programs by national Parties throughout the world stands out particularly in a number of instances of record such as the united front against fascism prior and subsequent to the Hitler-Stalin Pact (discussed *infra* in "Nondeviation").

In the "Classics" themselves certain basic programs and policies are provided for, all aimed at one objective: the forwarding of the revolution. That this term is not used in the "Classics" in the evolutionary sense such as the "industrial revolution" appears in *State and Revolution* (Pet. Ex. 139, pp. 52-53), where Lenin adopts Engels' definition: "Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i.e., by highly authoritative means, and the victori-

ous party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries." Thus power is both obtained and maintained by force.

One such primary program is that pertaining to labor organization. As appears from Lenin's *What Is To Be Done?* (Pet. Ex. 417, pp. 105, *et seq.*) the Marxist should not be interested in labor unions, as such, but rather from the use which can be made of such organizations as part of the revolutionary scheme. As Stalin points out in *Problems of Leninism*, they are the all-embracing organizations of the working class. "They constitute a school of communism. . . . They unite the masses of the workers with their vanguard." (Pet. Ex. 138, p. 30.) In effect, what Lenin and Stalin are saying is: Here are ready-made groups of substantial size, made up of members of the class which according to the labor theory of value are the exploited, and consequently should be the base of the revolution; and infiltration of such groups by a hard core of diligent workers for the Party offers a ready field for propaganda and proselytizing.<sup>24</sup> As it is stated in the Comintern's *Theses and Statutes*:

"Every party desirous of belonging to the Communist International should be bound to carry on systematic and persistent Communist work in labor unions, co-operatives and other labor organizations of the masses." (Pet. Ex. 8, p. 29.)

[fol. 2434] The same volume discusses the trade union movement (p. 53, *et seq.*), and (at p. 57) it states: "Consequently, the Communists must strive to create as far as possible complete unity between the trade unions and the Communist Party, and to subordinate the unions to the practical leadership of the Party, as the advance guard of the workers' revolutions." *Strategy and Tactics of the Proletarian Revolution* (Pet. Ex. 343, pp. 67-68) states that one of the principal tasks of a Communist is joining a union to win the leadership in the worker's struggle. This

<sup>24</sup> Application by respondent of this tactic is in the subsection "Trade Unions," *infra*.

is to conform with the principle that reforms should not be utilized for the sake of reforms but, rather, for the disintegration of the imperialist regime; and that a reform should be used as a base and "... as an aid in combining legal work with illegal work, to intensify under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie." (Pet. Ex. 121, p. 104.) Trade unions are thus considered as an important vehicle.

The "Classics" disclose that youth programs are considered important.<sup>25</sup> Concerning the Young Communist League, Stalin says in *Problems of Leninism* (Pet. Ex. 138, p. 31), "Its task is to help the Party educate the younger generation in the spirit of socialism. It provides young reserves for all the other mass organizations of the proletariat in all branches of administration." Lenin's attitude on the necessity of particular emphasis on youth is shown in part by quotations from Lenin's works in *Political Affairs* (Pet. Ex. 477, pp. 86 and 88):

"Is it not natural for young people to predominate in our party, the party of revolution? We are the party of the future and the future belongs to the youth. We are a party of innovators and innovators are always followed most eagerly by the youth. We are a party of self-sacrificing struggle against the rotten old system, and the youth are always the first in self-sacrificing struggles.

"The youth will decide the issue of the whole struggle, the student youth, and still more the working-class youth. . . . Do not fear their lack of training, do not tremble at their inexperience and lack of development. If you are unable to organize and stimulate them to action, they will turn to the Mensheviks and the Gaps, and this inexperience of theirs will cause five times more damage. . . . Only you must unfailingly or-  
[fol. 2435] ganize, organize and organize *hundreds* of circles. . . . *Either you create new, young, fresh, ener-*

<sup>25</sup> Respondent's implementations of this program appear in the sub-section "Youth" *infra*.

*getic, militant organizations everywhere for revolutionary Social-Democratic work of all sorts and kinds, and among all strata, or you will perish, enveloped in the glory of 'committee' bureaucrats."*

Dimitroff offers another reason for enlisting the efforts of youth (*The United Front*, Pet. Ex. 149, p. 150):

"The whole anti-fascist youth is interested in uniting and organizing its forces. Therefore you, comrades, must find such ways, forms and methods of work as will assure the formation, in the capitalist countries, of a *new type* of mass youth organizations, to which no vital interest of the working youth will be alien, organizations which, without copying the Party, will fight for *all* the interests of the youth and will bring up the youth in the spirit of the class struggle and proletarian internationalism, in the spirit of Marxism-Leninism."

From the *Theses and Statutes of the Third (Communist) International* (Pet. Ex. 8, p. 8), it appears that the International League of Communist Youth was given a representative with a right to vote on the Executive Committee of the Communist International and the Communist International had the right to a similar representative on the Executive Committee of the League. A youth program is considered an essential part of the activities of the Party in all countries and is required by the dictates of Marxism-Leninism.

In addition to the necessity of working among the youth in order to win them over to the side of the Communists and to use youth organizations as "levers" and "belts" in establishing the dictatorship of the proletariat, the "Classics" point out that the youth represent a reservoir for the development of future Party leaders and cadres. Lenin, in *What Is To Be Done* (Pet. Ex. 417), early declared that no movement can be durable without a stable organization of leaders to maintain its continuity. The training of leaders is basic under Marxism-Leninism and in view of the centralized nature of the Communist Parties, leaders and cadres

once trained keep in touch with the center of the Communist movement and faithfully carry out their tasks.<sup>26</sup>

[fol. 2436] Secrecy and its uses also finds importance in the "Classics."<sup>27</sup> (See Pet. Ex. 343, pp. 22-26; and Pet. Ex. 417.) In *What Is To Be Done?*, which the record shows respondent urged its members to read in 1951, Lenin shows how Party members can use trade unions as a front, keeping their identity as unionists secret. Stalin, in his speeches on the CPUSA (Pet. Ex. 109), published by the Central Committee of the CPUSA in pamphlet form, speaks of the danger of exposing the "conspirative" nature of the Communist Party.

Having thus considered the documentary evidence we turn now to further scrutiny of the content of Marxism-Leninism in the light of the testimony of the witnesses for both sides. All of the witnesses (except petitioner's witnesses, Dr. Mosely, Logofet and Carrington) testified to some knowledge of the "Classics" and of Marxism-Leninism. They studied it, were taught it, or were subject to it in practice. Admittedly, the "Classics" have been in use by the members and leaders of the CPUSA up to the date of the hearings in this proceeding.

Respondent's chief witness on Marxism-Leninism is Dr. Aptheker, a Marxist-Leninist and a member of the Party. He is a doctor of philosophy, an author, teacher, and lecturer, and is apparently regarded by respondent as one of its foremost theoreticians. He was offered as an expert on Marxism-Leninism and is qualified as such.

Summarized, his testimony is to the effect that Marxism-Leninism is in its inception and thereafter to be found in the writings of Marx, Engels, Lenin, Stalin and others; that its heart is dialectic materialism; that its aim is the end of capitalism and the attainment of a socialist state which will eventually dissolve into communism; that it is a science, usable in all countries as such and that in this sense it applies to the United States which is an "imperialist" nation; that its international aspects are only fraternal and represent a similarity of interests of the working

<sup>26</sup> See "Training and Reporting," *infra*.

<sup>27</sup> A later section is devoted to respondent's "Secret Practices."



class of all countries; that the "Classics" are used only for illumination and for historical background by Communists; that Marxism-Leninism provides a guide for action only as a science would be a guide for a scientific experiment; that it contains no directives and the CPUSA is not controlled or dominated by the Soviet Union thereby; and that the name Marxism-Leninism is not used to denote any hidden meaning for the direction of initiatives in the Communist movement.

[fol. 2437] Dr. Aptheker construes the term "dictatorship of the proletariat" as employed in Marxism-Leninism this way—"Socialism means the rule of the working people. The rule of the working people means the dictatorship of the proletariat." (Tr. 14211.) Thus he equates socialism with dictatorship of the proletariat. He then states that the term "dictatorship of the proletariat is used as distinguished from the dictatorship of the bourgeoisie, which is any capitalist society"; and that the state "rules in one case as Bourgeoisie, in the other case [as] the working class" (Tr. 14211); and that is the only connotation of the term dictatorship. He then points to the statement in *Foundations of Leninism* (Pet. Ex. 121, p. 53) to the effect that capitalist countries are dictatorships of an exploiting minority over the exploited majority, whereas the dictatorship of the proletariat is the dictatorship of the exploited majority over the exploiting minority. He continues to say that where force appears in the revolutionary transition the force comes from the exploiter; that it is in the effort to resist this force that force appears in a revolutionary transition; the force is accountable to the reactionary exploiters since they do not wish to accede to the peacefully expressed will of the vast majority of the population; that forcible resistance to this may then be offered by the majority and, in so doing, the machinery of repression of the reactionaries will be smashed; and that this is what is meant by "smashing of the state machine," which has happened in every revolution, e.g., the American Revolution. Thus it is his construction of Lenin's writings that "... unfortunately the American Bourgeois would resist forcefully, the peaceful change would not be possible." (Tr. 14217-18.) Dr. Aptheker's testimony on the general subject of

force and violence is that it need not occur in a Marxist-Leninist revolution and that it only occurs after the majority have legally and peacefully achieved the breakthrough. He states that if use of force and violence occurs "... Marxism-Leninism says, without any exception, at any time—there is no exception to this—if it does occur, says Marxism-Leninism, it will come as the result of the first offer of force and violence, illegally, subversively, by a minority, against the will and the peaceful development and the legal expressions of this peaceful development of the mass of the people." (Tr. 13520.) He testified further that under Marxism-Leninism "... revolution is not exported, ... revolution is indigenous, ... it grows out of necessities of the given society and the given country." (Tr. 13527.) To support this the witness refers to a quotation by Lenin of Engels to this effect. And to give a more [fol. 2438] recent illustration, the witness supports this testimony with a statement by Stalin to Mr. Roy Howard of this country in 1936 wherein he said that "export of revolution is nonsense. Each country, if it wishes, will make its own revolution, and if it does not wish to there will be no revolution. Thus, for example, our country wanted to make a revolution and made it." (Tr. 13528.)<sup>27a</sup>

Dr. Aptheker further testified that the 21 conditions of membership in the Communist International (discussed *infra* in sub-section "21 Conditions of Membership") are utilized by the Party for "purely historic" reasons; that it is a current position of Marxism-Leninism which represents a theoretical change, that notwithstanding the existence of imperialism, it is now very possible the forces of peace, i.e., the strong world movement to socialism, would remove the inevitability of war. In support of his testimony on this change, he cites an article authored by Seleznev

<sup>27a</sup> In giving such support for his testimony, we assume, of course, the witness sought to give current validity to Stalin's 1936 statement. In the face of developments in Eastern and Central Europe (after World War II) discussed in the section entitled "World Communist Movement," we do not credit his testimony on this point.

appearing in *Political Affairs*.<sup>27b</sup> To show another theoretical change in Marxism-Leninism, the witness cites an article by Sobolev, "which originally appeared in a Russian magazine a couple of years ago," (Tr. 13444) appearing in the May 1952 issue of *Political Affairs*. He testified further that no member or leader of respondent has altered any fundamental precept of Marxism-Leninism, and that the Party's present leaders have resisted any concept of American exceptionalism.<sup>27c</sup>

[fol. 2439] This witness testified also that intellectual freedom thrives in a country under a Marxist-Leninist program in that as the economy is released the intellect is also released, the intellect being allied with the economy; that fascism is a phenomenon which appeared after World War I and has capitalism as its fundamental social organization; that it is the reflection of the most intense contradictions of monopoly capitalism; and that the reason that Communists fight fascism is that the two are exact opposites, the fascists negate freedom and the Communists ennoble it.

The witness says, in conclusion, that there is no world Communist movement as described in the Act; and that the maintenance and extension of the democratic principles expressed in the Constitution is of the essence of Marxism-Leninism; and that Marxism-Leninism must have unity of theory and action and is based upon this unity; and that the ultimate test of any such theory is practice and objective reality.<sup>28</sup>

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<sup>27b</sup> Seleznev is a Soviet Union spokesman, thus indicating that the Soviet Union authored this significant theoretical change. The certainty is that respondent's expert on Marxism-Leninism did not cite this respondent as authority for the theoretical change asserted.

<sup>27c</sup> Dr. Aptheker's testimony on this tends to show that Marxism-Leninism is what the Soviet Union says it is, in that no American member or leader of respondent has changed any fundamental concept and the changes he relates apparently emanate from the Soviet Union. Further indication of this is in Pet. Ex. 126, p. 244, wherein respondent states an application of Leninism to the "negro question" in the United States was dictated to respondent by the Comintern.

<sup>28</sup> A reading of Dr. Aptheker's testimony in its entirety reveals he considers himself deeply enmeshed in the issues of this proceeding. We do not mean to infer that because one is a proponent

Respondent's witness Gates testified Marxism-Leninism is a social science. He says that the CPUSA is an independent and completely autonomous organization. Concerning the "Classics," he states that while *Problems of Leninism* has been used for teaching in the CPUSA schools, it is taught as historical writing and not as a blueprint or an order for Communists to follow all over the world and that it is not the program of the CPUSA. Witness Flynn states that the "Classics" have been and are used in the Party schools as of the date of her testimony (June 26, 1952) but as reference books for history, and for the principles of Marxism-Leninism.

The net of the pertinent testimony of petitioner's witnesses,<sup>29</sup> all of whom, as Party members, had some instruction in the meaning of Marxism-Leninism and some of whom were officials, writers or teachers for the Party, agrees with respondent's testimony only to the extent that one of the component parts of Marxism-Leninism is the philosophic-sociological concept that capitalism must and will inevitably be superseded by a dictatorship of the proletariat which will eventually be succeeded by a stateless class of society known as communism. This original Marxist doctrine, they state, has superimposed on it the revisions and the supplementations of Lenin, Stalin, Dimitroff [fol. 2440] and others which provide it with programs and policies to bring about the end of the present capitalistic era, designated as "imperialism," on a world-wide scale and by any means, including force and violence. The effort to bring about the dictatorship of the proletariat is an integrated effort of the working classes in all countries and the leadership thereof is in the Soviet Union, where it has succeeded.

Lautner, a former high Party official and teacher, shows that adherence to Marxism-Leninism has implicit in it com-

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of a subject his testimony on it should by virtue of this be accorded little weight. But we do state that Dr. Aptheker is an expert witness with an intense interest in the outcome of this proceeding and virtually says so. We weigh his testimony accordingly:

<sup>29</sup> We accept the substance of such testimony, as being the weight of the evidence.

plete subservience on the part of all Communist Party organizations, whether in the United States or elsewhere (and on the part of the individual members in all strategic and most tactical matters), to the rulers of the Soviet Union; and that respondent adheres to Marxism-Leninism and consequently its constitution is no more than a by-law to Marxism-Leninism and has no validity except insofar as it conforms thereto. He establishes that references in the Party's constitutions to upholding the Constitution of the United States are incompatible with Marxism-Leninism, are merely "self-serving." (Tr. 9732.) They have no real validity.

Lautner further testified concerning the meaning of Marxism-Leninism:

"Marxism-Leninism taught us that monopoly capitalism or imperialism was a world-wide phenomenon, therefore there is need of a world-wide organization, an organization that has ties to successfully cope with this problem and eventually bring about the downfall of monopoly capitalism and imperialism." (Tr. 9514.)

Also, that the *Program of the Communist International* was used by him in classes in 1947, 1948 and 1949 "because the program of the Communist International lays down the strategic aims of the Communist Parties." (Tr. 9532-33.)

Petitioner's witness Budenz, a former Party member and Editor of the *Daily Worker*, testified, when asked the meaning of the first sentence of the Party's 1945 constitution (which sentence is identical with the first sentence of the 1948 constitution):<sup>30</sup>

"Marxism-Leninism is a well-known and historical term in the Communist documents and discussions. It is that interpretation of so-called scientific socialism based on the writings of Marx, Engels, Lenin and Stalin, [fol. 2441] and which holds as the goal of the Communist Parties of the world the necessity for the vio-

<sup>30</sup> This sentence proclaims that the Communist Party is a political party "basing itself upon the principles of scientific socialism, Marxism-Leninism." (Pet. Exs. 329, 374.)

lent shattering of the bourgeoisie states in order to set up in their place a completely new state machinery, the dictatorship of the proletariat. This shall be achieved under Marxism-Leninism through the Party of the new type, the Bolshevik Party under Bolshevik discipline, which rejects the concept of class peace." (Tr. 11831.)

He goes on to state that the Communists in the United States (during his membership) regarded the American government as a bourgeois state, and that further statements in the Preamble concerning the Communist Party's defense of the United States Constitution were not reconcilable with Marxism-Leninism. He explained that:

"The statements cannot be reconciled. The dedication of Marxism-Leninism is the dedication historically and categorically to the violent shattering of the bourgeois state as the necessary step toward progress, and this other language in the light of that, since Marxism-Leninism principles prevail, is merely a window-dressing for legal protective purpose. It is part of the Aesopian language recommended by Lenin."<sup>31</sup> (Tr. 11832.)

He states further that the "Classics" were used in his work as *Daily Worker* Editor up to the time he left the Party (October 1945) and that:

"... I referred to Marxism-Leninism. I referred to Stalin as the leader, teacher and guide, things of that sort, which was Aesopian to the extent that it presented Stalin as the leader, teacher, and guide, but didn't explain that he completely controlled the Communist movement, although I could have done it because Bittelman had stated in Milestones that Stalin was the leader, the Communist Party of the Soviet Union was the leader." (Tr. 12263.)

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<sup>31</sup> For a definition of "Aesopian," see Lenin's *Imperialism*, (Pet. Ex. 140, p. 7, n. 1.)



Another witness for petitioner, Meyer, taught Marxism-Leninism in respondent's schools and shows it to be a body of doctrine which is first a philosophy of history, and, secondly, a guide to the Communist Party on the basis of that philosophy, in carrying out its historical role of overthrowing the capitalist system and replacing it with a dictatorship of the proletariat to establish socialism and [fol. 2442] thence communism. Petitioner's witness Philbrick was taught this in Party classes and was instructed that the lessons of Marxism-Leninism were to be applied to present day affairs as a guide to action.<sup>32</sup>

Witness Meyer shows that the *History of the Communist Party of the Soviet Union (B)* was used as a living guide to revolutionary action based on the experience of the Bolsheviks and the writings of Lenin and Stalin. Witness Evans establishes that the "Classics" were used in the Marxist-Leninist Institute from April 1949 to June 1950. Witness Budenz was told by Trachtenberg, head of the Party's cultural commission charged with direction of Communist cultural activities and in charge of the Party's general publishing field, that he was not permitted to issue any Marxist literature, especially the "Classics," without the authorization of the Marx Institute in Moscow. The *Daily Worker* used the "Classics" in its work. Budenz shows that Party leader Dennis in 1945 recommended: "A thorough return throughout the Party to the Marxist-Leninist Classics, particularly to the writings of Stalin, the *History of the Communist Party of the Soviet Union*, *Foundations of Leninism*, and Dimitroff's *Report to the Seventh Congress*, which dealt with the true nature of how to conduct the United Front while forwarding the Communist revolutionary aims." (Tr. 11812.) Witness Lautner testified that on the basis of the "Classics," at the National Training School in 1941, he was taught how Lenin applied Marxism to the epoch of imperialism and established a party of a new type, how Stalin applied this to the party

<sup>32</sup> Cf. in this connection Dimitroff's statement in *The United Front* (Pet. Ex. 149) that it is necessary to combine operations of policy with "the mastery of the great teachings of Marx, Engels, Lenin and Stalin as a guide to action." (P. 236.) (Emphasis added.)

as a force, the leading political party of the working class; that Marxism-Leninism was a guide to action for the Party in the United States; that the aim of the Party was to gain political and economic power in this country and that this was to be accomplished, on the basis of Marxism-Leninism, by a world-wide organization.

It is the testimony of the respondent that its slogan of "Defend the Soviet Union" was only applicable when the Soviet Union was weak and struggling; now that it is strong, such action on her behalf is not necessary. This testimony leaves the inference that the test is whether the Soviet Union needs respondent's aid.

Consideration has been given to the mass of exhibits which shed light on the application of Marxism-Leninism by respondent. From them it further appears that respondent, its leaders and its members, taught, studied, discussed, [fol. 2443] used and applied the "Classics" in the manner enunciated by the authors of these "Classics" and to an extent incompatible with any claim that the "Classics" are not considered binding upon them in all fundamentals.

Moreover petitioner's witnesses establish without dispute that until 1939 or early 1940 the fundamental text books used by the Party around which its course on Marxism-Leninism was organized were the *Communist Manifesto* (Pet. Ex. 31) and *Foundations of Leninism* by Stalin (Pet. Ex. 121), and that widely used in conjunction therewith were compilations of Lenin's and Stalin's writings such as *Strategy and Tactics* (Pet. Ex. 343) *Theory of the Proletarian Revolution* and *Dictatorship of the Proletariat*. After the appearance in late 1939 or early 1940 of *The History of the Communist Party of the Soviet Union* (Pet. Ex. 330) it became the central text book for the Party's teaching of Marxism-Leninism. This work, clearly not designed for Russian use, was widely acclaimed as intended for use in capitalist countries as is shown by a resolution, adopted August 10, 1939, signed by the Communist Parties of France, Great Britain, the United States, Germany and Italy (Pet. Ex. 296), which states, *inter alia* (p. 73):

"The appearance of the *History of the Communist Party of the Soviet Union (Bolsheviks)* is one of the greatest events in the life of the Communist world movement and of the international labor movement,

in the struggle of the working people of all countries for emancipation. Written with the immediate participation of Comrade Stalin and authorized by the Central Committee of the C.P.S.U. (B.), the *History* occupies an extraordinary place among the classic works of Marxism-Leninism. The *History* is intended to play—and will undoubtedly play—a very important role in the successful mastering of Bolshevism by the Communists of the capitalist countries, in the consolidation of the Sections of the Communist International, and in raising their ideological and political level.”

As indicated by the discussion of the evidence in this section, issue was joined principally on two questions relating to Marxism-Leninism: (a) whether Soviet Union domination over the various Communist Parties is integrated into the doctrine; and (b) whether Marxism-Leninism calls for force and violence if necessary in overthrowing existing non-Communist governments.

We conclude that Marxism-Leninism is a body of doctrine, with strategy and tactics to effectuate it, containing the goal of a socialist state under a dictatorship of the proletariat which will eventually evolve into a classless society. [fol. 2444] It postulates an international class struggle of proletariat against bourgeoisie, of communism against capitalism, characterized since 1916 as in its last historical epoch of decay, called “imperialism.” The Bolshevik-led “Russian Revolution” in 1917, bringing Communists into control of Russia, is considered in Marxism-Leninism as the first breakthrough of the capitalist world front; thus it placed the Soviet Union and its Communist leaders in a pre-eminent position among the Marxists of the world. The Soviet leader Lenin immediately set about to organize the world Communist movement and to construct an apparatus, the Third Communist International, with which to more effectively wage the class struggle on an international plane (see *infra*). The most significant contributions to Marxism, the writings of Lenin, increased in volume and stature and upon Lenin’s death Stalin succeeded him as the “greatest living Marxist-Leninist,” its foremost protagonist. Stalin in his contributions to the corpus of Marxism-

Leninism placed emphasis upon the practical implementation of the strategies and tactics of the basic class struggle.

The organizer and leader of this struggle in each country, a Communist party, such as respondent, which has both political and non-political aspects, is required. Lenin and Stalin have defined in Marxism-Leninism the organizational requirements for such a party, using as the model what was found best by them for seizing power in the Bolshevik revolution. Among these requirements are that the political aspects be subservient to the revolutionary objective of seizing governmental power by any means; that the Party must have an official organ and adhere without deviation to Marxist-Leninist concepts and their application; it must organize on the principle of democratic centralism which in reality results in submission to control from above, and instill and abide by an iron discipline both in adherence to concepts, obedience to directives, and in waging a relentless struggle against the class enemy.

The primary objective of Marxism-Leninism is destruction of all "imperialist" states, to be supplanted by socialist states under dictatorships of the proletariat (working class), which we find is a dictatorship of a Communist party.

In furtherance of this objective, Marxism-Leninism, primarily as a result of Lenin's and Stalin's contributions, provides "rules and principles" (Pet. Ex. 343, p. 8) which are to be flexibly applied. These include concentration upon labor unions, the youth, minorities and colonies, and the use of slogans, such as variations on "anti-imperialism" and "peace." Temporary alliances, known as united fronts, must be entered into but always with the ultimate revolutionary goals in view. Where lawful methods are effective these should be used and, where not, unlawful methods [fol. 2445] should be utilized, or a combination of both. Secrecy should be employed where necessary. Allegiance to and support of the Soviet Union as the leader of the World Communist movement inheres. The United States, as the leading "imperialist" nation, and the Government, viewed as a dictatorship of the capitalist class, are the most important targets of the movement.

We find that it is a tenet of Marxism-Leninism that capitalist (imperialist) governments must be overthrown

by force and violence, if necessary,<sup>33</sup> and that in Marxism-Leninism the Soviet Union is given the role of leader of the world Communist movement and, hence, of the various Communist parties in the movement.

We conclude that fulfilling the role of the vanguard Communist Party called for in Marxism-Leninism and the adherence to and practice by an organization of Marxism-Leninism is evidence, and strong evidence, that it is substantially under the domination and control of the Soviet Union, the leader of the world Communist movement and that it operates primarily to advance the objectives of the world Communist movement.

We proceed to examine the record further as to respondent's basic policies and activities to determine the extent to which they are formulated and carried out pursuant to Marxism-Leninism as hereinbefore defined; and the extent to which such policies and activities effectuate programs and policies originated by the Soviet Union and have as their purpose the furtherance of the policies of the Soviet Union and the advancement of the objectives of the world Communist movement. We treat first with the voluminous evidence relating to the world Communist movement.

## [fol. 2446] 2. WORLD COMMUNIST MOVEMENT

Although in section 2 of the Act Congress has found the existence of a world Communist movement and has described its characteristics, the nature of the issues in this proceeding are such that in addressing evidence to them the existence of a world Communist movement and its characteristics have emerged. For a full understanding of the evidence, therefore, we now set forth the salient portions thereof, principally documentary, which establish the existence of the world Communist movement, its characteristics and its leadership.<sup>34</sup> The subsequent findings in this

<sup>33</sup> To be sure, if for some reason a government should voluntarily accede to socialism under a "dictatorship of the proletariat," or if it should not choose to defend itself from lawless attacks, force would not be necessary.

<sup>34</sup> The definition of a Communist-action organization in section 3(3) of the Act and the provisions of several of the criteria in section 13(e), wherein reference is made to the world Communist



Report relating to the various statutory considerations in section 13(e) as well as the section on Marxism-Leninism, preceding, also evidence the existence of this movement and illuminate its nature.

Respondent in its amended answer and through the testimony of its witnesses admits that a world Communist movement presently exists in the sense that the CPUSA and other Communist Parties in countries throughout the world are guided in their activity by Marxism-Leninism, termed by respondent to be a "social science," and have as their common goal the establishment of "socialism." Respondent contends, however, that the international relationship among the Communist Parties of the world is merely a fraternal one. It denies that there exists a world Communist movement which is substantially dominated or controlled by the Soviet Union and which has as its purpose the establishment of dictatorships of the proletariat in all countries throughout the world. Party leader Gates testified that in referring to "the world Communist movement" in his writings he had in mind separate autonomous movements. Respondent's expert witness, Dr. Herbert Aptheker, offers the explanation that in Marxist-Leninist literature such terms as "international solidarity," "proletarian internationalism," "working class internationalism," etc., are used simply to indicate the fraternal relationship among the working classes of the countries of the world. Party leader Elizabeth Gurley Flynn acknowledges that there are Communist Parties in substantially [fol. 2447] all the countries of the world, and in the sense there is a common ideal, "a common principle of Marxism-Leninism" (Tr. 13861), there is respect for other Party leaders and especially for Joseph Stalin. Flynn admits that Stalin, as the leader of the senior Communist Party of the world, the Communist Party of the Soviet Union, is universally regarded by Communists as the ideological

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movement, further indicate the usefulness of a Board determination regarding the nature and existence of the movement. In view of our findings on the movement, it is unnecessary to discuss respondent's contention that no such movement was shown to exist and it is also unnecessary to discuss whether these findings are required.



leader of world communism;<sup>35</sup> however, she denies that either Stalin or the Communist Party of the Soviet Union exercises domination or control over respondent or any other Communist Party in the world.<sup>36</sup> She draws an analogy in her testimony with the international trade union movement, asserting that this movement exists but that there is no world-wide trade union; and that, similarly, a world Communist movement does exist, but that an international integrated Communist Party does not.

None of respondent's witnesses testified with any particularity or substance concerning the period when the Party was openly affiliated with the Communist International, and petitioner's evidence is substantially un rebutted in this regard. Although it could have done so, it offered no witness who had been on its National Committee for any appreciable period of time during its open affiliation with the International.<sup>37</sup>

We are unable to accept the characterizations or explanations of respondent's witnesses concerning the existence, character, and leadership of the world Communist movement, as they are contrary to the clear preponderance of evidence now to be discussed.

Exemplary of the Marxist-Leninist justification for Russian Communists to organize the world Communist movement are the statements set forth in *Foundations of Leninism* (Pet. Ex. 121, p. 17) and *Problems of Leninism* (Pet. Ex. 138, pp. 9, 19), by Stalin, quoting Lenin to the effect that the Russian Communists were impelled by the whole situation, domestic and foreign, to transfer the struggle to the "international arena" (Pet. Ex. 121, p. 17); that the "greatest difficulty of the Russian Revolution, its greatest historical problem" is "the necessity to solve international problems, the necessity to call forth the world revolution" (Pet. Ex. 138, p. 19.)

[fol. 2448]. The requirements imposed by Lenin's analysis in 1917 of the world situation as the epoch of imperialism

<sup>35</sup> Since the hearing herein Stalin died.

<sup>36</sup> Party leader Flynn here parallels the status of respondent with that of all other Communist Parties.

<sup>37</sup> Flynn commenced on the National Committee in 1938, and Gates in 1945.

and of imperialism as the "eve of the socialist revolution" (Pet. Ex. 121, p. 34) changed the "very approach to the question of proletarian revolution, of the character of the revolution, of its scope, of its depth, the scheme of the revolution in general." (*Ibid.*, p. 34.) Stalin, based upon Lenin's analysis, stresses in *Foundations of Leninism* that "capitalism has evolved into imperialism, and imperialism is a world system of financial enslavement and colonial oppression of the vast majority of the population of the earth by a handful of 'advanced' countries" (*ibid.*, p. 35), that: "Now we must speak of the world proletarian revolution; for the separate national fronts of capital have become links in a single chain called the world front of imperialism, which must be opposed by a common front of the revolutionary movement in all countries." (*Ibid.*, p. 35.)

#### a. THE THIRD COMMUNIST INTERNATIONAL

The present world Communist movement was first manifested organizationally by the formation in March of 1919 in Moscow, Russia, of the Third Communist International. As this event is recorded in the *History of the Communist Party of the Soviet Union (B)* (Pet. Ex. 330), it was "on the initiative of the Bolsheviks, headed by Lenin," that the first Congress of Communist Parties was called in Moscow, the work of which "was guided by Lenin"; and, "Thus was founded an international revolutionary proletarian organization of a new type—the Communist International—the Marxist-Leninist International."<sup>38</sup>

<sup>38</sup> Showing further that the Comintern was based on Marxism-Leninism both in origin and operation, the *Programme of the Communist International* (Pet. Ex. 125), issued in 1929, provided that: "the Communist International, in its theoretical and practical work, stands wholly and unreservedly upon the ground of *revolutionary Marxism* and its further development, Leninism, which is nothing else but Marxism of the epoch of imperialism and proletarian revolution. \* \* \* Expressing the historical need for an international organization of revolutionary proletarians—the grave-diggers of the capitalist order—the Communist International is the only international force that has for its programme the dictatorship of the proletariat and Communism, and that openly comes out as the organizer of the international proletarian revolution." (Pet. Ex. 125, p. 8.)

## (1) SECOND WORLD CONGRESS

One year later, July 17 - August 7, 1920, the Second Congress of the Communist International adopted and promulgated its *Theses and Statutes*, setting forth its aims and purposes as later herein detailed, and described itself as [fol. 2449] "*a single universal Communist party, of which the parties operating in every country form individual sections.*"<sup>39</sup> (Pet. Ex. 8, p. 5, emphasis added.)

A "Statute" of the Comintern insured that it would serve the interests of Russia by providing:

"The Communist International fully and unreservedly upholds the gains of the great proletarian revolution in Russia, the first victorious socialist revolution in the world's history, and calls upon all workers to follow the same road. The Communist International makes it its duty to support with all the power at its disposal every Soviet Republic, wherever it may be formed." (Pet. Ex. 8, p. 5.)

Further the *Theses and Statutes* sets forth the basic content and orientation of the Comintern's program and policies in which subservience to the Soviet Union inheres:

"... all the events of world politics are inevitably concentrating around one point, namely, the struggle of the bourgeois world against the *Russian Soviet Republic, which is grouping around itself the Soviet movements of the vanguard of the workers of all countries, and all national liberation movements of the colonial and subject countries.*..." (Pet. Ex. 8, p. 67, emphasis added.)

<sup>39</sup> The integral organizational unity of the Comintern in action is shown in many ways in this record, as for example by witness Meyer, who transferred to respondent from the Communist Party of Britain in 1934, describing this as a transfer from one section of the Comintern or world Communist movement to another. The "Constitution and Rules of the Communist International" as contained in its *Programme* provides that it is a "World Communist Party." (Pet. Ex. 125, p. 85.)

That the Communist International was an apparatus for organizing the Communist Parties of the world into a world movement is clearly stated:

*"... The organized apparatus of the Communist International is to secure to the toilers of every country the [fol. 2450] possibility at any given moment of obtaining the maximum of aid from the organized workers of other countries.*

"For this purpose the Communist International confirms the following items of its statutes:

*"§1. The new International Association of Workers is established for the purpose of organizing common activity of the workers of various countries who are striving towards a single aim: the overthrow of capitalism; the establishment of the dictatorship of the proletariat and of the International Soviet Republic; the complete abolition of classes, and the realization of socialism—the first step of Communist Society."*  
(Pet. Ex. 8, p. 5, emphasis added.)

The Communist International was in fact a world Communist Party, organized and controlled as to policies and activities by the Soviet Union, consisting of the various Communist Parties of the countries throughout the world, which constituted its sections. With headquarters in Moscow, it embodied an elaborate organizational structure, related to implementing the basic strategy and tactics of Marxism-Leninism, including an Executive Committee (ECCI); departments on organization, agitation and propaganda, youth, and labor unions (RILU or Profintern) which were interlocked with similar departments in the national Communist Parties; secretariats or commissions covering sections of the world, such as the Anglo-American, Latin American, Far Eastern, and Western European Secretariats which supervised the policies of the various national Parties, and the field bureaus, such as the Caribbean, Pan-Pacific, and South American Bureaus, which directed the Communist Parties on a continental or semi-continental scale. There was no North American Bureau, but the Political Bureau of respondent acted in that capacity, su-

pervising the Communists in Canada, Cuba, Mexico, and others down to the Panama Canal.

The Soviet Union was the leader of the Communist International, exercising control over its policies and activities. The Communist Party of the Soviet Union had five votes to one each for the other larger Parties in the Executive Committee of the Comintern (ECCI), which respondent in a 1934 resolution acknowledged to be "the general staff of the world revolutionary movement giving unity and leadership to the Communist Parties of the world." (Pet. Ex. 136, p. 18.) The Government of the Soviet Union [fol. 2451] financed the Comintern. All of the heads of the Comintern who were identified in the record were leading members of the Communist Party of the Soviet Union. Respondent's official knowledge and acquiescence in the Soviet Union's domination of the Comintern is illustrated by an article by one of its present top officials, Alexander Bittelman, written in 1934, which proclaimed that:

"... The leading role of the Communist Party of the Soviet Union in the Comintern needs neither explanation nor apology. A party that has opened up the epoch of the world revolution . . . is cheerfully recognized and followed as the leading party of the world communist movement. And by the same token, the leaders of that party—first Lenin and now Stalin—are proudly followed as the leaders of the proletariat and of all oppressed in every country of the world." (Pet. Ex. 126, p. 235.)

Respondent joined this international Communist organization shortly after it was constituted and admittedly until 1940 participated therein. That respondent recognized that its membership therein subordinated any national interests to the international interests is plainly shown by its "Program" (Pet. Ex. 13) for the year 1921, wherein it proclaims:

"The Communist International subordinates the so-called national interests to the interest of the international proletarian revolution. The Communist International merges and centralizes the reciprocal aid of the proletariat of all countries. In order to accelerate

the final collapse of the imperialist system of the world, the Communist International supports the exploited colonial peoples in their struggles against imperialism.

"The Communist International is the concentrated will of the world revolutionary proletariat. Its mission is to organize the working class of the world for the overthrow of the capitalist system and the establishment of Communism. The Communist International is a fighting body and assumes the task of combining the revolutionary forces of every country.

"In order to overthrow the international bourgeoisie and to create an International Soviet Republic as a transition stage to the Communist Society, the Communist International will use all means at its disposal, including force of arms." (Pet. Ex. 13, p. 11.)

[fol. 2452] Further, that complete and total allegiance and dedication was demanded in affiliation with the Comintern, and was acknowledged and in turn stressed by respondent, is also shown by its "Program":

"... The Communist International is an organization for waging class warfare for the liberation of the working class; there can be no reservations in endorsement and affiliation with it. Loyalty 'with reservations' is treachery. Endorsement and defense of Soviets in Russia, with failure to advocate the Soviet form of proletarian dictatorship in the United States is hypocrisy." (Pet. Ex. 13, p. 5.)

Respondent also stated that it "accepts the principle that the class struggle for the emancipation of the working class is an international struggle" (Pet. Ex. 19, p. 85) and that for "final victory . . . against world capitalism the working class of the world must be united under one leadership." (*Ibid.*, p. 86.) Respondent openly proclaimed that it entered "the struggle against American capitalism, the most powerful of the national groups, under the inspiration of the leadership of the Communist International." (*Ibid.*, p. 86.)



## (2) 21 CONDITIONS OF MEMBERSHIP

Fundamental to the world Communist movement were the 21 "Conditions of Admission to the Communist International" promulgated in its *Theses and Statutes* in 1920 (Pet. Ex. 8). Uncontradicted testimony and documents establish that these "Conditions" were endorsed and accepted by respondent and were binding upon it.<sup>40</sup>

The scope of these "Conditions" was such as to prescribe the organizational format, the major policies, the basic activities, and general orientation of all the national Communist Parties, including respondent. Findings on current adherence to the requirements of these "Conditions" by respondent are made in subsequent sections of this Report.

[fol. 2453] Condition No. 17 required that respondent's name be altered to "Communist Party of the United States of America, section of the Third Communist International." Condition No. 12 required the party to be formed upon the basis of democratic centralism, stressing that only when possessed of an "iron discipline" (Pet. Ex. 8, p. 30) will it be able to fully and thoroughly carry out its duty as part of the world Communist movement. Condition No. 20, in order to aid control, required that two-thirds of all committee members and members of central institutions consist of comrades who have made open declarations as to their desire to join the Comintern. Condition No. 11 required an inspection of personnel and the removal of unreliable elements from parliamentary party fractions, and Condition No. 13 required a systematic check of personnel to remove petty bourgeois elements which may have in-

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<sup>40</sup> As to respondent's adoption of these "Conditions," cross-examination of Kornfeder brought out that he was in error on direct in identifying Petitioner's Exhibit 123 (*The Communist* for March 1, 1921) as the organ of the "then completely united Communist Party of America." (Tr. 1560.) The exhibit shows that it was the "Official Organ of the Communist Party of America" and that the organic unity with the "United Communist Party" group, which had been ordered by the Communist International, had not been completed. We find that the record justifies the consideration of the exhibit and does not require that Kornfeder be discredited on this.

filtrated a party. Condition No. 16 made binding upon the party all resolutions of the Comintern, and Condition No. 21 made liable to exclusion from the party anyone who rejected the theses and conditions of the Third Communist International.

Turning now to the party press, the *Theses and Statutes* required the creation of a Communist press, stressing that "Without a Communist press the preparation for the dictatorship of the proletariat is impossible" (Pet. Ex. 8, p. 20) and Condition No. 1 required that the party organ be controlled by devoted Communists, editorships being restricted to "reliable Communists who have proved their loyalty to the cause of the proletarian revolution." (*Ibid.*, p. 27.) Condition No. 18 required that the Party organ publish important documents of the Comintern and it was mandatory that such official organ consistently "denounce the bourgeoisie . . . its assistants and agents—reformists of every color and shade" (*ibid.*, p. 27) and that its propaganda and agitation follow the line of the Comintern.

As to specific policies and programs, Condition No. 15 required the maintenance of a program in accordance with the resolutions of the Comintern. Condition No. 8 required, concerning "the Colonial question and that of oppressed nationalities," an "especially distinct and clear line of conduct" (*ibid.*, p. 29) binding a party "to denounce without any reserve all the methods of 'its own' Imperialists in the colonies, supporting not only in words but practically a movement of liberation in the colonies." (*Ibid.*, p. 29.)

[fol. 2454] Condition No. 9 binds a party of the Comintern to carry on "systematic and persistent Communist work in the labor unions, co-operatives and other labor organizations of the masses" for the purpose of winning over labor unions to communism and to form Communist groups therein "completely subordinated to the party in general." (Pet. Ex. 8, p. 29.) Condition No. 2 requires the removal from labor organizations of all "reformists."

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"Principal Comintern resolutions which enunciated the policies and program of the world Communist movement, as controlled by the Soviet Union, are discussed in detail later herein.

Condition No. 10 requires a party to "support by all means in its power the International Unification of Red Labor Unions, adhering to the Communist International." (*Ibid.*, p. 29.) One of the "Statutes" of the Comintern provided for the International League of Communist Youth as a subordinate international organization with a basic defined relationship with the Communist Party in every country.

Another aspect of the "Conditions" was to make the allegiance of a section party and its members to the Comintern, and hence to the Soviet Union, paramount to any other. For example, Condition No. 14 obligates every member party of the Comintern "to render every possible assistance to the Soviet Republics in their struggle against all counter-revolutionary forces." (Pet. Ex. 8, p. 30.) It directs the member parties to use legal and illegal means to obstruct military efforts against the Soviet Union. Condition No. 1 requires advocacy of the dictatorship of the proletariat, Condition No. 3 the creation of a parallel illegal apparatus "which at the decisive moment should do its duty by the party, and in every way possible assist the revolution" (*ibid.*, p. 28) and Condition No. 6 requires that any party affiliating "renounce not only avowed social patriotism, but also the falsehood and hypocrisy of social pacifism" and directs that a party should systematically demonstrate the need for the "revolutionary overthrow of capitalism." (*Ibid.*, p. 28.)

These 21 "Conditions" were never changed by the Communist International and were enforced and implemented by respondent and used to educate its members. Considerable documentary material of record also established that respondent fully complied with and fulfilled the requirements of membership in the Communist International and faithfully followed and carried out its instructions and directives.<sup>42</sup>

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<sup>42</sup> We consider later herein the relationship and identity of respondent's present organizational form, policies and activities, with those required by the "Conditions" of membership in the international Communist organization.

## (3) PROGRAMS AND POLICIES

As stated, a member party of the Comintern was required to maintain a program in accordance with the resolutions of the Comintern. In addition to the *Theses and Statutes* adopted at the Second World Congress in 1920, two major sets of Comintern resolutions are in evidence — those of the Sixth World Congress, held in 1928, and also embodied in Petitioner's Exhibit 125 (the *Programme of the Communist International*) and in part in Petitioner's Exhibit 130, and those of the Seventh World Congress, held in 1935, contained in Petitioner's Exhibit 137.

The basic program and policies promulgated by these resolutions and the strategy and tactics for their implementation are of major significance in that they show the existence, leadership, programs and objectives of a world Communist movement. These resolutions cover a myriad of policies and tactics. We shall specifically treat with these matters and their implementation throughout the Communist movement primarily as they relate to respondent herein.

The *Theses and Statutes* sets forth, under the headings "Fundamental Tasks of the Communist International," "Conditions of Admission to the Communist International" (discussed above), "Role of the Communist Party in the Proletarian Revolution," "The Communist Party and Parliamentarism," "The Trade Union Movement," and "Thesis on the National and Colonial Questions," the policy, program and tactics of the world Communist movement in each of these areas.<sup>43</sup>

As one of "The Fundamental Tasks of the Communist International" it was decreed that "the principal duty of the Communist Parties, from the point of view of an international proletarian movement, is at the present moment the uniting of dispersed Communist forces, the formation

<sup>43</sup> Though not geared to the international field nor of sufficient materiality to respondent to warrant discussion here, there were also included policies and programs concerning "When and Under What Conditions Soviets of Workers' Deputies Should Be Formed" and the "Agrarian Question."

in each country of a single Communist Party." (Pet. Ex. 8, p. 13.) Specific statements are made relative to this task in France, Germany, England, the United States, Switzerland, and Italy. (*Ibid.*, pp. 21-23.)

In defining "The Role of the Communist Party in the Proletarian Revolution," the *Theses and Statutes* proclaimed:

"The Communist International emphatically rejects the opinion that the workers could carry out a revolution without having an independent political party of their own. Every class struggle is a political struggle [fol. 2456] gle. The object of this struggle, which inevitably turns into a civil war, is the obtaining of political power. However, this power cannot be acquired, organized and directed otherwise than by means of a political party. Only in case the workers have for their leader an organized and experienced party, with strictly defined objects, and a *practically drawn up program* of immediate action, both in internal and foreign policy—then only will the acquisition of political power cease to be a causal episode, but will serve as a starting point." (Pet. Ex. 8, p. 35, emphasis added.)

The various organizational requirements for a party, such as strict discipline and democratic centralism, are also set out. (*Ibid.*, p. 40.)

Concerning the "Communist Party and Parliamentarism," the Comintern stresses that it is "the immediate historical task of the working class to tear this apparatus out of the hands of the ruling classes, to break and destroy it, and to create in its place a new proletarian apparatus. At the same time, however, the revolutionary general staff of the working class is vitally concerned in *having its scouting parties in the parliamentary institu-*

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"As shown in another section of this Report, pursuant to this organizational task of the Comintern and at its direction various factions and elements of respondent were united into a single Communist Party in the United States.

tions of the bourgeoisie, in order to facilitate this task of destruction." (*Ibid.*, pp. 44-45, emphasis added.)

The purpose of "political" activity is shown by setting forth the strategy and tactics for the "Utilization of the Bourgeois Parliament" (*ibid.*, p. 45) in the struggle for the dictatorship of the proletariat. It is stressed that "it is only possible to speak of utilizing the bourgeois State organizations with the object of destroying them. The question can be discussed only and exclusively on such a plane." (*Ibid.*, p. 46, emphasis added.)

The Comintern instructs its Parties that:

"The elementary means of the struggle of the proletariat against the rule of the bourgeoisie is, first of all, the method of mass demonstrations . . . carried out . . . under the direction of a united, disciplined, centralized Communist Party. \* \* \* and logically leading to an uprising against the capitalist order of government. \* \* \* work within the parliaments . . . must be fully subordinated to the objects and tasks of the mass struggle outside the parliaments." (Pet. Ex. 8, p. 47.)

[fol. 2457] If Communists are able to obtain the majority in a local government, the Comintern directs that: "The whole activity of the Communists in the communal administration . . . must be a part of the general work of destruction of the capitalistic system." (Pet. Ex. 8, p. 48.) Communist participation in election campaigns is to be used as a rehearsal for revolutionary mobilization, as shown by Comintern instruction that: "*The elective campaign must be carried on not in the sense of obtaining a maximum of votes, but in that of a revolutionary mobilization of the masses around the mottoes of the proletarian revolution.*" (*Ibid.*, p. 48, emphasis added.)

It is further provided that a Party's Central Committee must sanction the candidacy of only men who have proved their unwavering loyalty to the working class; that it must have a permanent representative in the parliamentary faction with the right of veto; that it be entitled to appoint or reject the orator of the faction, to demand that he submit previously the thesis of his speech, or the text, for confirmation. Further, that:



"... Each candidate... must sign a paper to the effect that at the first request of the Central Committee of the Party he shall be bound to give up his mandate, in order that in a given situation the act of leaving the parliament may be executed in unison. \* \* \* A Communist delegate, by decision of the Central Committee, is bound to combine lawful work with unlawful work. In countries where the Communist delegate enjoys a certain inviolability, this must be utilized by way of rendering assistance to illegal organizations and for the propaganda of the party. (Pet. Ex. 8, p. 51.)

"The Communist members shall make all their parliamentary work dependent on the work of the Party outside the parliament. \* \* \* Each Communist member must remember that he is not a 'legislator'... but an agitator of the Party, detailed into the enemy's camp in order to carry out the orders of the Party there. *The Communist member is answerable not to the wide mass of his constituents, but to his own Communist Party—whether lawful or unlawful.*" (*Ibid.*, pp. 51-52, emphasis added.)

[fol. 2458] Concerning "The Trade Union Movement," the Comintern's *Theses and Statutes* stresses that during World War I the trade union movement was in the main allied with "Social Democracy" (Pet. Ex. 8, p. 53) and proved to be a part of the apparatus of the bourgeoisie. It directs that "Communists must join such unions in all countries, in order to make them efficient organs of the struggle for the suppression of capitalism and for Communism." (*Ibid.*, p. 55.) Concerning the United States, the Comintern directs that:

"... In America, alongside the opportunist trade unions there are unions with revolutionary tendencies—although not Communist ones—there the Communists are bound to support such revolutionary unions, to persuade them to abandon Syndicalist prejudices and to place themselves on the platform of Communism..." (Pet. Ex. 8, pp. 56-57.)

The strategic duty of Communists concerning trade unions is clearly defined:

"... Consequently, the Communists must strive to create as far as possible complete unity between the trade unions and the Communist party, and to subordinate the unions to the practical leadership of the Party, as the advance guard of the workers' revolutions. For this purpose the Communists should have Communist factions in all the trade unions and factory committees, and acquire by their means an influence over the labor movement and direct it." (*Ibid.*, p. 57.)

Concerning labor unions generally, a Party in the world Communist movement is directed that:

"The duty of the Communists consists in inspiring the labor unions ... with ... the spirit of Communism. In execution of this duty the *Communist must practically subordinate the factory committees and the unions to the Communist Party, and thus create a proletarian mass organ, a basis for a powerful centralized party of the proletariat*, embracing all the organizations of the proletarian struggle, leading them all to one aim, to the victory of the working class, through the dictatorship of the proletariat to Communism." (*Ibid.*, p. 60, emphasis added.)

[fol. 2459] This activity in labor unions is also required to be international in its orientation:

"The Communist workers who are members of the labor unions in all countries must ... strive to create an international battle front of labor unions. ... when the danger is threatening the working class of one country, the labor unions of the others, being organizations of the larger masses, should all come to its defense ... the labor unions must consciously use their forces for the support of all revolutionary struggles in their own and in other countries. For this purpose ... they must do so on an international scale by joining the Communist International. ..." (Pet. Ex. 8, p. 61.)

Concerning "The National and Colonial Questions," the Comintern dealt with this matter in "the epoch of financial capital and imperialism" (*ibid.*, p. 66) and by way of a thesis it proclaimed the program of the world Communist movement:

*"... the policy of the Communist International on the National and Colonial questions must be chiefly to bring about a union of the proletarian and working masses of all nations and countries for a joint revolutionary struggle leading to the overthrow of capitalism..."* (Pet. Ex. 8, p. 67, emphasis added.)

And it is emphasized that it is:

*"... necessary, first, to explain constantly that only the Soviet regime is able to give the nations real equality, by uniting the proletariat and all the masses of the workers in the struggle against the bourgeoisie; second, to support the revolutionary movement among the subject nations (for example, Ireland, American negroes, etc.) and in the colonies."* (*Ibid.*, p. 69.)

This thesis makes clear that the struggle against:

*"... petty bourgeois nationalism and pacifism ... must be brought to the foreground the more vigorously because of the urgent necessity of transforming the dictatorship of the proletariat and changing it from a national basis (i.e., existing in one country [the Soviet Union] and incapable of exercising an influence [fol. 2460] over world politics), into an international dictatorship (i.e., a dictatorship of the proletariat of at least several advanced countries capable of exercising a determined influence upon world politics). . . ."*<sup>45</sup>  
(Pet. Ex. 8, p. 69, emphasis added.)

<sup>45</sup> It is pertinent to say at this juncture that this uncontradicted evidence now being discussed formed the bedrock upon which the world Communist movement was formed and continues to operate. The relevancy and materiality of this evidence is manifest when it is considered with that later set forth showing that this movement has never substantially changed in program or activities. Respondent's contention that this evidence is irrelevant is accordingly without merit.

It further sets forth the characteristics of the internationalism required by the Comintern, namely, "proletarian internationalism,"<sup>46</sup> which it states demands: "(1) the subordination of the interests of the proletarian struggle in one nation to the interests of that struggle on an international scale; (2) the capability and the readiness on the part of one nation which has gained a victory over the bourgeoisie, of making the greatest national sacrifices for the overthrow of international capitalism." (*Ibid.*, pp. 69-70.)

That the Comintern's program and policy calling for international coordination between Communist Parties in the colonial countries and those in the capitalist states is regarded as necessary for a Communist victory in the world struggle against capitalism is plain in the *Theses*:

"The breaking up of the colonial empire, together with the proletarian revolution in the home country, will overthrow the capitalist system in Europe. Consequently, the Communist International must widen the sphere of its activities. It must establish relations with those revolutionary forces that are working for the overthrow of imperialism in the countries subjected politically and economically. These two factors must be co-ordinated if the final success of the world revolution is to be guaranteed." (Pet. Ex. 8, p. 73.)

[fol. 2461]

#### (4) SIXTH WORLD CONGRESS

These basic policies and programs were perpetuated for the world Communist movement by the Comintern's Sixth World Congress in 1928, and, together with the "Statutes" of the Comintern, were issued as its *Programme*<sup>47</sup> and self-styled "the *programme of struggle for the world pro-*

<sup>46</sup> As will appear by evidence set forth throughout this Report, the term "proletarian internationalism" connotes the elements which the Comintern prescribes and not merely the innocuous fraternalism which respondent's witnesses ascribe to it.

<sup>47</sup> The *Programme* was considered fundamental by respondent and was never repudiated during witness Kornfeder's membership, which lasted until 1934.

letarian dictatorship, the programme of struggle for world communism." (Pet. Ex. 125, p. 7.) "The Strategy and Tactics of the Communist International in the Struggle for the Dictatorship of the Proletariat" (*ibid.*, p. 67) were also embodied in the *Programme*, which took into account the development and consolidation of the world movement which had occurred in the intervening years since 1920, and the developing "revolutionary crises" (*ibid.*, p. 7) of capitalism during this period in the epoch of imperialism. The scope and purpose of the Comintern's world-wide revolutionary activities and the conceptualization of their connection to the Russian Revolution are shown by the Comintern's analysis of this period as "The General Crisis of Capitalism and the First Phase of World Revolution":

"The powerful shock to which the whole of world capitalism was subjected, the sharpening of the class struggle and the direct influence of the October proletarian revolution gave rise to a series of revolutions and revolutionary actions on the Continent of Europe as well as in the colonial and semi-colonial countries: January, 1918, the proletarian revolution in Finland; August, 1918, the so-called 'rice-riots' in Japan; November, 1918, the revolutions in Austria and Germany, which overthrew the semi-feudal monarchist regime; March, 1919, the proletarian revolution in Hungary and the uprising in Korea; April, 1919, the Soviet Government in Bavaria; January, 1920, the bourgeois-national revolution in Turkey; September, 1920, the seizure of the factories by the workers in Italy; March, 1921, the rising of the advanced workers of Germany; September, 1923, the uprising in Bulgaria; Autumn, 1923, the revolutionary crisis in Germany; December, 1924, the uprising in Esthonia; April, 1925, the uprising in Morocco; August, 1925, uprising in Syria; May, 1926, the general strike in England; July, 1927, [fol. 2462] the proletarian uprising in Vienna. These events, as well as events like the uprising in Indonesia, the deep ferment in India, the great Chinese revolution, which shook the whole Asiatic continent, are links in one and the same international revolutionary

chain, constituent parts of the profound general crisis of capitalism. This international revolutionary process embraced the immediate struggle for the dictatorship of the proletariat, as well as national wars of liberation and colonial uprisings against imperialism, which inseparably go together with the agrarian mass movement of millions of peasants. Thus, an enormous mass of humanity was swept into the revolutionary torrent. World history entered a new phase of development—a phase of prolonged general crisis of the capitalist system. . . .” (Pet. Ex. 125, pp. 18-19.)

The *Programme* proclaimed that “world economy has been split into two fundamentally hostile camps: the camp of the imperialist States and the camp of the dictatorship of the proletariat in the U.S.S.R.” (*Ibid.*, p. 24.) This concept became the touchstone for respondent as well as other national Parties in orienting their policies to those of the world Communist movement.

It emphasized the struggle was being waged on an international scale using the Soviet Union as a base:

“... The class struggle, which hitherto was conducted in circumstances when the proletariat was not in possession of State power, is now being conducted on an enormous and really world scale; *the working class of the world has now its own State—the one and only fatherland of the international proletariat...*” (*Ibid.*, pp. 24-25, emphasis added.)

Concerning “The Significance of the U.S.S.R. and Her World Revolutionary Duties,” the *Programme* provides:

“... the U.S.S.R. is an extremely important factor in the general crisis of capitalism . . . because she plays an exceptionally great revolutionary role generally; she is the international driving force of proletarian revolution that impels the proletariat of all countries to seize power; she is the living example proving that the working class is not only capable of destroying capitalism, but of building up Socialism as well, she [fol. 2463] is the prototype of the fraternity of na-



tionalties in all lands united in the World Union of Socialist Republics and of the economic unity of the toilers of all countries in a single world Socialist economic system that the world proletariat must establish when it has captured political power." (Pet. Ex. 125, p. 63.)

The *Programme* devotes an entire section to "The Strategy and Tactics of the Communist International in the Struggle for the Dictatorship of the Proletariat." (Pet. Ex. 125, pp. 67-84.) Here is emphasized the necessity to counteract "ideologies among the working class inimical to communism" (*ibid.*, p. 67) which are characterized variously as "reformism" (*ibid.*, p. 70),<sup>48</sup> "opportunism" (*ibid.*, p. 71) and "petty-bourgeois." (*Ibid.*, p. 74.) Sun Yat Senism in China, Gandhism in India, and Garveyism in America are also attacked as ideologies inimical to communism and counter-revolutionary.

After nine years of organizational activity the Comintern proclaimed that the "successful struggle of the Communist International for the dictatorship of the proletariat presupposes the existence in every country of a compact Communist Party." (*Ibid.*, p. 75.) It set as "fundamental strategic aims" (*ibid.*, p. 76) for each national Party the extension of its "influence over the majority of the members of its own class, including working women and the working youth" (*ibid.*, p. 76) and emphasized that: "It is particularly important for the purpose of winning over the majority of the proletariat, to capture the *trade unions*." (*Ibid.*, p. 76.)

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<sup>48</sup> Illustrative of this is "Social Democracy" which the Comintern flays as having "betrayed Marxism, having traversed the road from revisionism to complete liberal bourgeois reformism" because "it has exchanged the theory of the revolutionary downfall of capitalism for the counterfeit coinage of 'sound' capitalism transforming itself peacefully into Socialism; it has replaced revolution by evolution, the destruction of the bourgeois State by its active upbuilding, the theory of proletarian dictatorship by the theory of coalition with the bourgeoisie, the doctrine of international proletarian solidarity—by preaching defense of the imperialist fatherland." (Pet. Ex. 125, p. 69, emphasis added.)

Concerning "The National and Colonial Questions" it is provided: "The tasks of the Communist International connected with the revolutionary struggle in *colonies, semi-colonies and dependencies* are extremely important strategic tasks in the world proletarian struggle." (*Ibid.*, p. 77.) The more detailed "Theses and Resolutions of the [fol. 2464] Sixth World Congress" on this question (Pet. Ex. 130) shows most clearly the machinations of the world Communist movement, and we shall therefore treat at some length herein this major aspect of the world Communist programme. The Sixth Congress declared that:

"... the 'Theses on the National and Colonial Questions' drawn up by Lenin and adopted at the II. Congress still have full validity, and should serve as a guiding line for the further work of the Communist Parties...." (Pet. Ex. 130, p. 1659.)

The alignment of the Communist movements in the capitalist countries into a fighting front with the Soviet Union is emphasized in this connection:

"The establishment of a fighting front between the active forces of the Socialist world revolution (the Soviet Union and the revolutionary labour movement in the capitalist countries) on the one side, and between the forces of imperialism on the other side, is of fundamental decisive importance in the present epoch of world history...." (*Ibid.*, p. 1661.)

The importance of the colonial masses as "a most powerful auxiliary force of the Socialist world revolution" (*ibid.*, p. 1661) and of colonial countries as "the weak spot of world imperialism, and of the necessity to unite the colonial movements with the international Communist movement in defense of the Soviet Union is also emphasized:

"... The colonial countries at the present time constitute for world imperialism the most dangerous sector of their front. \* \* \* Thus, all the basic questions of the revolutionary movement in the colonies and semi-colonies are found to have an immediate connec-

tion with the great epoch-making struggle between the capitalist and socialist systems,—a struggle which at present is being conducted on a world scale by imperialism against the U.S.S.R., and inside each separate capitalist country between bourgeois class rule and the Communist movement.

"In this struggle, the co-operation of the revolutionary proletariat of the whole world and of the toiling masses of the colonies represents the surest guarantee of victory over imperialism, in this struggle, [fol. 2465] every war conflict between two imperialist States, as also war of the imperialists against the U.S.S.R., must be utilised in the colonies for the mobilisation of the masses and for drawing them into a decisive struggle against imperialism, for national emancipation and for the victory of the workers and peasants." (Pet. Ex. 130, p. 1661, emphasis added.)

Speaking of tactics, the Comintern instructs:

"The Communists must learn how to utilise each and every conflict, to develop such conflicts and to broaden their significance, to connect them with the agitation for revolutionary slogans, to spread the news of these conflicts among the wide masses, to arouse these masses to independent, open manifestations in support of their own demands, etc." (*Ibid.*, p. 1668, emphasis added.)

"The building up and development of the Communist Parties in the colonies and semi-colonies" is set forth as "one of the most important and primary tasks of the Communist International" (*ibid.*, p. 1670) and it is added that: "An especially great responsibility in this connection lies with the Communist Parties of the imperialist countries." (*Ibid.*, p. 1670.)

Further showing the international strategy and tactics, the "Theses and Resolutions" directs that: "Alongside of these general tasks, the Communist Parties in the various colonies have a series of special tasks, resulting from the particular social-economic structure and political situation in each country" (*ibid.*, p. 1672); and it instructs:

"In China, the future growth of the revolution will place before the Party as an immediate practical task the preparation for and carrying through of armed insurrection . . . to the overthrow of the power of the imperialists, landlords and national bourgeoisie—the power of the Kuomintang. (Pet. Ex. 130, p. 1672.)

. . . . .

"The basic tasks of the Indian Communists consist in struggle against British imperialism . . . for establishment of the Dictatorship of the proletariat and [fol. 2466] peasantry in the form of a Soviet Republic. These tasks can be successfully carried out only when there will be created a powerful Communist Party which will be able to place itself at the head of the wide masses of the working class . . . and to lead them in the armed insurrection against the feudal-imperialist bloc. . . . The union of all Communist groups and individual Communists scattered throughout the country into a single, illegal, independent and centralised party represents the first task of Indian Communists.

. . . . .

"In Indonesia . . . rebuilding the destroyed Party organisation demands from the Party new methods of work, corresponding to the illegal conditions created by the police regime of Dutch imperialism. . . .

"In Korea, the Communists must strengthen their work in the ranks of the proletariat . . . secure the reorganisation of the trade unions . . . combine economic struggle with political demands . . . they must associate in the closest possible fashion the demands for the national emancipation of the country with the slogan of the agrarian revolution, which is acquiring ever-more pressing importance . . . (Ibid., p. 1672.)

. . . . .

"In Egypt . . . the strengthening of the class struggle, and leadership in the class struggle are, consequently, the first and most important tasks of the Communist Party . . . Special attention needs to be devoted to the building up of the Party itself, which is still very weak.

"In the French colonies of North Africa, the Communists must carry on work in all the already existing national-revolutionary mass organisations in order to unite through them the genuine revolutionary elements on a consistent and clear platform of a fighting bloc of workers and peasants. . . ." (Pet. Ex. 130, p. 1674.)

[fol. 2467] Specific instructions are also given to the Communist Parties involved, including respondent, concerning the world Communist movement's policy on the Negro as a part of its national liberation program, including its application to the United States (discussed at fols. 2549-2553, *infra*), South America, Union of South Africa, "Negro States" of Liberia, Haiti, San Domingo, and the colonies and mandated territories in Central Africa of various "imperialist" powers—Great Britain, France, Portugal, etc.

The Comintern also specified "immediate tasks of the Communist Parties of the imperialist countries" (Pet. Ex. 130, p. 1675) (thus including respondent) which have constituted the basis for the colonial and national liberation policy of respondent and the world Communist movement for many years.<sup>48a</sup> The first task is "the establishment of regular connections between the Communist Parties and the revolutionary trade union organisations of the impe-

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<sup>48a</sup> Generally illustrative of respondent's complete dedication and support of the Comintern as an organization of the world Communist movement is the statement in 1934 of one of its present leaders, Alexander Bittelman, published in *The Communist*: "In the fifteen years of its existence the Comintern has grown into a true World Party. It has reached the high stage where all 'Communist Parties are carrying out one single line of the Comintern,' a stage where all 'Communist Parties are united . . . into a single centralized World Party' \* \* \* In this lies the main strength of the world revolution and the guarantee of its inevitable victory. It is this that makes possible, for the first time in the history of the world, the effective carrying out of a world-revolutionary strategy, the only road to victory over capitalism. And it is in Comrade Stalin, since Lenin's death, that this strategy has found the greatest formulator, interpreter, and organizer . . . by building the revolutionary movement in the United States we are also building the world power of the proletariat for the victory of the world revolution." (Pet. Ex. 126, p. 248, emphasis added.)

rialist centres, on the one hand, and the corresponding revolutionary organisations of the colonies, on the other hand" and the rendering of "practical assistance to the revolutionary movement in the colonies." (*Ibid.*, p. 1675.)

It is urged that only insofar as the help given by the Communist Parties in an imperialist country "actually facilitates the struggle of the corresponding colonial countries against imperialism, can their position in the colonial question be recognised as a genuinely Bolshevik one," that: "In this lies the criterion of the revolutionary activity in general." (*Ibid.*, p. 1675.) The second series of tasks "consists in genuine support of the struggle of the colonial [fol. 2468] peoples against imperialism through the organisation of mass demonstrations and other effective activities of the proletariat" (*ibid.*, p. 1675) and the third task is to "expose the colonial policy of the socialists before the native masses and in this way to direct against the social democratic leaders—servants of imperialism—the same well-deserved hatred which the oppressed colonial peoples bear against the imperialists." (Pet. Ex. 130, p. 1676.)

#### (5) SEVENTH WORLD CONGRESS

The Seventh World Congress of the Comintern,<sup>49</sup> held in Moscow in August 1935, perpetuated and extended the basic policies, programs, and strategy of the world Communist movement in the various aspects set out above, but, as proclaimed in its *Resolutions* (Pet. Ex. 137), it was principally "a Congress of a *new tactical orientation for the Communist International*" which, "Standing firmly on the impregnable position of Marxism-Leninism" and "acting in the spirit and guided by the method of *living Marxism-Leninism*, has reshaped the tactical lines of the Communist International to meet the changed world situation." (Pet. Ex. 137, p. 11.)

<sup>49</sup> Respondent, by way of a resolution of a plenum of its Central Committee, endorsed "Fully and wholeheartedly the decisions of the Seventh World Congress of the Communist International" (Pet. Ex. 185, p. 1182) and instructed its members that: "Our chief task at present is to reorientate the work of the Party in accord with the tactical line of the Seventh World Congress." (*Ibid.*, p. 1183.)



The Seventh World Congress in a resolution on the report of Georgi Dimitroff<sup>50</sup> defined the alignment of class forces in the international struggle and set the basic content of world Communist policy:

"The Seventh Congress of the Communist International declares that the alignment of class forces in the international arena and the tasks facing the labor movement of the world are determined by the following basic changes in the world situation:

[fol. 2469] "(a) *The final and irrevocable victory of socialism in the Land of the Soviets*, a victory of world importance, which has enormously enhanced the power and role of the U.S.S.R. . . . and is inspiring the toilers to struggle against capitalist exploitation, bourgeois reaction and fascism, for peace, and for the freedom and independence of the peoples. \* \* \* (b) *The most profound economic crisis in the history of capitalism* \* \* \* (c) *The offensive of fascism, the advent to power of the fascists in Germany, the growth of the threat of a new imperialist world war and of an attack on the U. S. S. R.* \* \* \* (d) *The political crisis*, expressed in the armed struggle of the workers in Austria and Spain against the fascists \* \* \* (e) *The revolutionization of the toiling masses throughout the whole capitalist world which is taking place under the influence of the victory of socialism in the U.S.S.R. and of the world economic crisis . . . The revolutionary movement in the colonial countries and the Soviet revolution in China are extending. The relationship of class forces on a world scale is changing more and more in the direction of a growth of the forces of revolution.*" (Pet. Ex. 137, pp. 21-22.)

Based on this analysis the Comintern instructed by a report of Dimitroff that "the united front tactics must be applied in a new way" (*ibid.*, p. 12) by the national Com-

<sup>50</sup> Dimitroff is author of *The United Front* (Pet. Ex. 149), discussed in *Marxism-Leninism*, at fols. 2432-2433, *supra*, and in the section of this Report concerning respondent's utilization of the united front tactics, fols. 2530-2533, *infra*.

munist Parties throughout the world, and it enjoined "the Communist Parties to be guided by the following instructions when carrying out the united front tactics." (*Ibid.*, p. 26.) The *Resolutions* then directs that "*The defense of the immediate economic and political interests of the working class, the defense of the latter against fascism, must be the starting point and form the main content of the workers' united front in all capitalist countries*" (*ibid.*, p. 26); that "Without for a moment giving up their independent work . . . Communists . . . must strive to secure joint action with the Social-Democratic Parties, reformist trade unions and other organizations of the toilers against the class enemies of the proletariat, on the basis of short- or long-term agreements" (*ibid.*, p. 27); that "The forms in which the united proletarian front is realized . . . must be varied in character" and "may include . . . action agreed upon on a local, district, national or international scale; action agreed upon in the organization of the economic struggle of the workers, in defense of the interests of the unemployed, in carrying out mass political activity, in the organization of joint self-defense against fascist attacks; action agreed upon to render aid to political prisoners and their families, in the field of struggle against social reaction; joint action in defense of the interests of youth and women, in the sphere of the cooperative movement, cultural activity and sports . . ." (Pet. Ex. 137, p. 27.)

[fol. 2470] Dimitroff's instructions concerning the united front tactics were incorporated into a pamphlet entitled "Working Class Unity—Bulwark Against Fascism" (1935) and here, too, it was stressed by the world Communist movement that: "We want our Parties in the capitalist countries to come out and act as real political parties of the working class, to become in actual fact a political factor in the life of their countries, to pursue at all times an active Bolshevik mass policy." (Pet. Ex. 141, p. 69.)

In accordance with basic existing policy the Parties are instructed, however, to continue the ideological struggle against "reformism" and "Social-Democracy as the ideology and practice of class collaboration with the bourgeoisie," (Pet. Ex. 137, p. 29) even while ostensibly "united" with the "Social-Democratic" parties and organizations.

Further instructions in united front tactics are that: "*Election campaigns* must be utilized for the further development and strengthening of the united fighting front of the proletariat" (*ibid.*, p. 29); and that: "Communists must seek to bring about the establishment of a wide *anti-fascist people's front* on the basis of the proletarian united front, supporting all those specific demands of those sections of the toilers which are in line with the fundamental interests of the proletariat."<sup>51</sup> \* \* \* In the circumstances of a *political crisis* . . . the Communists must advance *fundamental* revolutionary slogans . . . directed toward still further shaking the economic and political power of the bourgeoisie . . . and which lead the working masses right up to the point of the revolutionary seizure of power."<sup>52</sup> (*Ibid.*, p. 30.) The Comintern also makes clear that Com-[fol. 2471] munists are to support any established united

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<sup>51</sup> Concurrent with the Seventh Congress, *Pravda*, on August 6, 1935, speaking for the Soviet Communist Party, proclaimed "The Program of the Struggle for the Unity of the Working Class," stating: "Unity—that is the command of the moment' The Communists are the motor which moves ahead the cause of unification of all anti-Fascist forces . . . toward unity of international proletarian action. \* \* \* The Communists cannot be alien to anything that agitates the popular masses." (Pet. Ex. 183, pp. 1, 4.)

<sup>52</sup> Illustrative of current evidence of the continuation of these tactics of the world Communist movement is the article "The General Elections in India," by Ajoy Ghosh, general secretary, Communist Party of India in *Political Affairs*, March 1952 (Pet. Ex. 491), wherein it is stated: "the elections grew into something far more than mere casting of votes in the ballot box. They grew into a mighty mass movement for the agrarian reform, for adequate rations, for a living wage, for civil liberties, for the formation of national States \* \* \* the flags which waved over the vast gatherings were the Red Flag and flags of parties in the United Front \* \* \* Never were the slogans of the Party and the United Front so popular \* \* \* Learning from the example of the immortal Party of Lenin and Stalin, learning from the history of the great Communist Party of China, we must . . . redouble our efforts to develop the movement which will sweep away the present Government and ensure a life of happiness and prosperity for our people. Such are the lessons our Party has learned from the elections and the recent events in India." (Pet. Ex. 491, pp. 37-38, 44.)

front government only to the extent it leaves them free to pursue the conquest of power:<sup>53</sup>

"In so far as the united front government will really undertake decisive measures against the counter-revolutionary financial magnates and their fascist agents, and will in no way restrict the activity of the Communist Party and the struggle of the working class, the Communist Party will support such a government in every way. The participation of the Communists in a united front government will be decided separately in each particular case as the concrete situation may warrant." (Pet. Ex. 137, p. 31.)

Concerning world Communist policy in "the colonial and semi-colonial countries," it is directed that "the most important task facing the Communists consists in working to establish an *anti-imperialist people's front*. For this purpose it is necessary to draw the widest masses into the national liberation movement . . . for the driving out of the imperialists, for the independence of the country." (*Ibid.*, p. 35.)

The "main tasks" of all Communist Parties of the world, formulated on the basis of Marxism-Leninism, are set forth and constitute with minor exceptions (e.g., the emphasis on anti-fascism) the basic policy and program of the world Communist movement to this day, as will be later shown. The *Resolutions* (Pet. Ex. 137) provides in this regard:

"... *The Seventh World Congress of the Communist International, confirming the decision of the Sixth Congress on the struggle against imperialist war, sets the following main tasks before the Communist Parties, revolutionary workers, toilers, peasants and oppressed peoples of the whole world:*

<sup>53</sup> See utilization of this tactic in Central and Eastern European countries after World War II, *infra*.

<sup>54</sup> That this "peace" policy is basically designed for "defense" of the Soviet Union and is based on "proletarian internationalism" is shown by the statement in the *Resolutions* that: "The peace

[fol. 2472] "1. *The struggle for peace,*" and for the defense of the U.S.S.R. . . .

"2. *The united people's front in the struggle for peace and against the instigators of war.* . . . (Pet. Ex. 137, p. 44.)

"3. *The combination of the struggle against imperialist war with the struggle against fascism.* The anti-war struggle . . . must be very closely combined with the struggle against fascism and the fascist movement. . . . (*Ibid.*, p. 45.)

"4. *The struggle against militarism and armaments.* The Communist Parties of all capitalist countries must fight: against military expenditures (war budgets), for the recall of military forces from the colonies and mandated territories, against militarization measures taken by capitalist governments, especially the militarization of the youth, women and the unemployed . . . (*Ibid.*, pp. 45-46.)

"5. *The struggle against chauvinism.* In the struggle against chauvinism the task of the Communists consists in educating the workers and the whole of the toiling population in the spirit of *proletarian internationalism* . . .

"6. *The national liberation struggle and the support of wars of national liberation.* . . . " (*Ibid.*, p. 46.)

[fol. 2473] Special emphasis is placed upon support for the Chinese Communists by the Comintern:

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policy of the U.S.S.R., putting forward proletarian internationalism as against national and racial dissension, is not only directed towards defense of the Soviet country, towards ensuring the safety of socialist construction; it also protects the lives of the workers of all countries . . . At the time when a new war between the imperialist states is approaching ever more closely, the might of the Workers' and Peasants' Red Army of the U.S.S.R. is constantly gaining in importance in the struggle for peace . . . *all those who are striving to preserve peace are vitally interested in strengthening and actively supporting the Red Army.*" (Pet. Ex. 137, p. 43, emphasis added.)

"It is the duty of the Communists actively to support the national liberation struggle of the oppressed peoples of the colonial and semi-colonial countries, especially the Red Army of the Chinese Soviets in their struggle against the Japanese and other imperialists and the Kuomintang. . . ." (Pet. Ex. 137, p. 47.)

In the event of a war against the Soviet Union, the Comintern instructs, in accordance with the Marxist-Leninist concept of just and unjust wars. (discussed at fol. 2423, *supra*), as follows:

"If the commencement of a counter-revolutionary war forces the Soviet Union to set the Workers' and Peasants' Red Army in motion for the defense of socialism, the Communists will call upon all toilers to work, with all means at their disposal and at any price, for the victory of the Red Army over the armies of the imperialists." (Pet. Ex. 137, p. 48.)

The period commencing in the late 1930's is considered in the world Communist movement as "the second round of wars and revolutions," and the basic orientation of world Communist policy, imposing as a "primary duty" upon national Communist Parties support and aid to the Soviet Union, is openly proclaimed:

"From the historic balance of achievements secured since the Sixth Congress of the Communist International, with which the world proletarian movement is approaching the second round of wars and revolutions and which determines the basic tasks of the world proletarian revolution, follows the primary duty of the working class and the toilers of the world and of all Sections of the C.I.:

"To help with all their might and by all means to strengthen the U.S.S.R. and to fight against the enemies of the U.S.S.R. Both under peace conditions and in the circumstances of war directed against the U.S.S.R. the interests of strengthening the U.S.S.R.,



of increasing its power, of ensuring its victory in all spheres and in every sector of the struggle, coincide [fol. 2474] fully and inseparably with the interests of the toilers of the whole world in their struggle against the exploiters with the interests of the colonial and oppressed peoples fighting against imperialism; they are the conditions for, and they contribute to, the triumph of the world proletarian revolution, the victory of socialism throughout the world. Assistance to the U.S.S.R., its defense, and cooperation in bringing about its victory over all its enemies must therefore determine the actions of every revolutionary organization of the proletariat, of every genuine revolutionary, of every Socialist, Communist . . ." (Pet. Ex. 137, p. 56.)

#### (6) DISSOLUTION OF COMINTERN

The Communist International was formally dissolved as such in 1943, at which time the United States and the Soviet Union were military allies. One reason given for this formal dissolution by Stalin was that it would remove the foundation for "fascist" charges that the Soviet Union was meddling in the internal affairs of other nations. Respondent, having a few years earlier ostensibly disaffiliated from the Communist International (discussed at fols. 2498-2501, *infra*), announced it was not "called upon to participate in the decision" (Pet. Ex. 207, p. 657) but it did, however, express its approval and support of the dissolution. (Pet. Ex. 206.) The basic factors behind dissolving this apparatus of the world Communist movement are set forth in subsequent reports by leaders of the Soviet Union, such as Zhdanov (Pet. Ex. 214-A) and Malenkov (Pet. Ex. 367), and in articles appearing at the time in the *Daily Worker*, reprinting the resolution of the Comintern's Presidium. Petitioner's Exhibit 205, the *Daily Worker* of May 26, 1943, shows that the dissolution was considered by the Presidium and respondent to be in the interest of furthering the world Communist movement:

" . . . The statement of the Comintern Presidium proposes, in view of the developments of the last decade,

to dissolve the Comintern because it has become outmoded and has outgrown its role as 'the guiding center of the international labor movement.' (Pet. Ex. 205.)

Respondent emphasizes that what is dissolved is simply the particular outmoded organizational form, not the international movement:

[fol. 2475] "... the Presidium does not propose to dissolve the Comintern center because the need to unite the workers on a world scale has disappeared. It proposes to do so because that particular organizational form for international proletarian unity, which was established at the First Congress of the Comintern in 1919

"and which corresponded to the needs of the initial period of the rebirth of the labor movement, more and more outlived itself in proportion to the growth of this movement and to the increasing complexity of problems in each country; *and that this form even became a hindrance to the further strengthening of the national workers' parties.*" (Pet. Ex. 205, emphasis added.)

It is stressed that the world Communist movement, no longer requiring the organizational apparatus of the Comintern, is stronger than ever:

"That the leading body of an international working-class organization frankly recognizes that it has outlived its useful function *and has even become a hindrance to the growth of workers' parties in various lands*<sup>55</sup> *must not be mistaken as a sign of weakness or of helpless collapse.*

"*On the contrary, it is a token of the present strength, vitality and basic Marxist-Leninist approach of all those forces throughout the world which for a quarter century maintained and sought to extend*

<sup>55</sup> We infer that by this is meant that the open avowed foreign orientation by Communist Parties in the various countries through membership in the Comintern was a hindrance to them in acquiring support.

workers' unity through the medium of the Comintern." (Pet. Ex. 205, emphasis added.)

The *Daily Worker* of May 31, 1943 (Pet. Ex. 206) shows clearly that new forms for the world Communist movement are contemplated:

"... The working class and the peoples must seek to change old forms and create new forms of organization to encompass the mass upsurge and give direction to the popular endeavour, in accordance with the widely divergent situations and problems prevailing in different groups of nations: \* \* \* Old forms must change and expand to meet the new needs. New forms of combination and effective organization arise.

[fol. 2476] "Just as the labor movement and the working class must respond to this need on a national scale, they will also seek to find the best medium and manner to advance solidarity of the working classes and peoples on an international scale." (Pet. Ex. 206, p. 2.)

#### b. FORMATION OF COMMUNIST INFORMATION BUREAU

The world Communist movement, under the hegemony of the Soviet Union, continued, notwithstanding the "dissolution" of its organizational form embodied in the Communist International. This is evidenced in many ways, as we shall see, such as continuation of policies and programs and graphically by the formation in September 1947, at a conference in Poland, of an organization composed of the Communist Parties of a number of countries under the name Information Bureau of Communist and Workers' Parties (variously called the Communist Information Bureau or the Cominform). Unlike the Comintern, the details of the Cominform's internal characteristics and administration do not appear in the record; however, the purpose of its formation and its basic characteristics are shown by two reports made at the founding conference, both by high Soviet Union leaders at the time—A. Zhdanov, member of the Politburo of the Communist Party of the Soviet Union, and Georgi M. Malenkov, member of the Central Committee of the Communist Party of the Soviet Union

and its secretary. When viewed with the Cominform's policies and programs as enunciated through its official organ, "*For a Lasting Peace, for a People's Democracy*," a number of copies of which are in evidence, these reports also show that the world Communist movement, intact in the basic orientation, policies and programs discussed above, continued via the Cominform and by Communist Parties not formally affiliated with it, such as respondent.

Turning now to this evidence, Zhdanov, in his report (Pet. Ex. 214-A), noting that World War II had recently ended, pointed out that the Communist International was formed after the first world war and under it the Communist Parties grew and were guided and strengthened and that the dissolution "conformed to the demands of the development of the labour movement in the new historical situation." (*Ibid.*, p. 4.) He declared that World War II greatly enhanced the international significance of the Soviet Union and extinguished all but two great "imperialist powers"—the United States and Great Britain, leaving the international alignment of forces in antagonistic world camps described as "the imperialist and antidemocratic camp on the one hand, and the anti-imperialist and democratic camp on the other." The United States "is the principal driving force of the imperialist camp." Britain and France are in alliance with the United States, which "is also supported by colony-owning countries, such as Belgium and Holland, by countries with reactionary anti-[fol. 2477] democratic regimes, such as Turkey and Greece, and by countries politically and economically dependent on the United States, such as the Near-Eastern and South-American countries and China." (Pet. Ex. 214-A, p. 2.)

Zhdanov proclaimed that:

"The cardinal purpose of the imperialist camp is to strengthen imperialism, to hatch a new imperialist war, to combat Socialism and democracy, and to support reactionary and antidemocratic pro-fascist regimes and movements everywhere." (*Ibid.*, p. 2.)

The makeup of the other international camp, founded upon the Soviet Union and encompassing "the fraternal Com-

munist parties in all countries," is also specified by Zhdanov:

"The anti-fascist forces comprise the second camp. This camp is based on the U.S.S.R. and the new democracies. It also includes countries that have broken with imperialism and have firmly set foot on the path of democratic development, such as Rumania, Hungary, and Finland. Indonesia and Viet Nam are associated with it; it has the sympathy of India, Egypt and Syria. The anti-imperialist camp is backed by the labour and democratic movement and by the fraternal Communist parties in all countries, by the fighters for national liberation in the colonies and dependencies, by all progressive and democratic forces in every country. . . ." (*Ibid.*, p. 2.)

The unity of the anti-imperialist camp on the ground of peace and on "all questions of foreign policy" with the Soviet Union is openly proclaimed by Zhdanov:

"All the forces of the anti-imperialist and anti-fascist camp are united in the effort to secure a just and democratic peace. It is this united effort that has brought about and strengthened friendly co-operation between the U.S.S.R. and democratic countries on all questions of foreign policy. These countries, and in the first place the new democracies—Yugoslavia, Poland, Czechoslovakia and Albania . . . as well as Bulgaria, Rumania, Hungary and to some extent Finland [fol. 2478] . . . have proved themselves in the post-war period staunch defenders of peace, democracy and their own liberty and independence against all attempts on the part of the United States and Great Britain to turn them back in their course and to bring them again under the imperialist yoke." (Pet. Ex. 214-A, p. 2.)

Zhdanov reviews the function of the Comintern apparatus to the world Communist movement, and shows again that it was dissolved because it was becoming a factor "hindering" the development of Communist Parties. He emphasizes, however, that "The new stage in the develop-

ment of the Communist Parties demanded new forms of contact among the parties. It was these considerations that made it necessary to dissolve the Comintern and to devise new forms of connection between the parties." (*Ibid.*, p. 4.) He further stresses that dissolution of the Comintern did not mean "the elimination of all ties, of all contact" between Communist Parties, that "experience has shown that such mutual isolation of the Communist Parties is wrong, harmful and, in point of fact, unnatural." (*Ibid.*, p. 4.)

Zhdanov, as a leading Russian Communist, reasserts for the Cominform the programs and policies of the world Communist movement once enunciated via the Comintern and specifies the tasks for Communist Parties throughout the world, stating:

"The chief danger to the working class at this present juncture lies in underrating its own strength and overrating the strength of the enemy. . . . concessions to the new course of the United States and the imperialist camp may encourage its inspirers to be even more insolent and aggressive. The Communist Parties must therefore head the resistance to the plans of imperialist expansion and aggression along every line—state, economic and ideological; they must rally their ranks and unite their efforts on the basis of a common anti-imperialist and democratic platform, and gather around them all the democratic and patriotic forces of the people." (*Ibid.*, p. 4.)

Malenkov, in his report to the Cominform's founding conference, adhered to the concept of two antagonistic camps as outlined by Zhdanov, and proclaimed that "all the sharpness of the class struggle, as far as the U.S.S.R. is concerned has now been shifted to the international scene." (Pet. Ex. 367, p. 144.) Malenkov openly states that: "The wise Stalin foreign policy of the Soviet Union, both prior to the war [World War II] and in the course [fol. 2479] of its conduct, enabled us correctly to utilize the contradictions existing within the imperialist camp." (*Ibid.*, p. 142.). Indicating further the Soviet Union's leadership



of the world Communist movement and its aid to the so-called "new democracies," Malenkov states:

"With regard to countries that have proved true friends and loyal allies of the Soviet state—the new democracies—the U.S.S.R. is always prepared to come to their assistance, and actually does so by rendering them extensive aid and firmly defending their interests." (Pet. Ex. 367, p. 143.)

Further, he reaffirms the colonial and national liberation policy of world communism:

"The U.S.S.R. and the new democracies pursue a policy of unswerving support with regard to colonial and dependent countries fighting for their national liberation from the yoke of imperialism." (*Ibid.*, p. 143.)

Showing a continuation of the general "anti-imperialist" policy of the world Communist movement, its identity with the foreign policy of the Soviet Union, and that its objective is to undermine "imperialism" and hence the United States, Malenkov states:

"... The foreign policy of the Soviet Union and of the democratic countries is designed to undermine imperialism, secure a stable and democratic peace among the nations, and generally strengthen amicable cooperation among the peace-loving nations.

"In following this line, our foreign policy is supported by the increased international significance of the Soviet state and the new democracies.

"The other trend in international politics is headed by the ruling clique of American imperialists. . . ." (*Ibid.*, p. 142.)

Concerning the necessity for reconstituting some apparatus to help coordinate the world Communist movement, Malenkov, speaking for the Central Committee of the Russian Communist Party, stated:

[fol. 2480] "The absence of contact between Communist Parties is a hindrance in coordinating the ac-

tions of Communists in various countries in their resistance to the plans of the imperialists, particularly now, when American monopoly capital is organizing an offensive against Communism and democracy, against the U.S.S.R. and the new democracies \* \* \* In our opinion it is necessary to put into effect definite measures designed to eliminate the present abnormal situation in this respect.

"That is why we consider it necessary to discuss at the present conference both the international situation and the question of improving contact between Communist Parties, of establishing regular connections between them with a view to achieving mutual understanding, exchange of experience and voluntary coordination of activities of the Communist Parties whenever they consider this necessary." (Pet. Ex. 367, p. 145.)

Respondent, although never formally a member of the Cominform, has, as shown by the evidence discussed in subsequent sections of this Report, remained dedicated to "proletarian internationalism," Marxism-Leninism, and the policies and programs of the world Communist movement as continued by the Cominform.

When the foregoing statements made at the Cominform's founding conference by leaders of the Soviet Union are considered in the light of additional evidence showing the policies and programs enunciated by the Cominform during the years that followed, it is clear that the world Communist movement, intact in policy and program and under the leadership of the Soviet Union, continued to exist and that the Cominform<sup>o</sup> was another apparatus serving this movement.

#### (1) PROGRAMS AND POLICIES

Turning now to an illustration of the additional evidence showing the continuation of the policies of the world Communist movement via the Cominform, its official organ for December 1949 publishes a report (Pet. Ex. 249) of M.

Suslov, a high official of the CPSU,<sup>56</sup> to a meeting of Communist Parties in November of that year, which we find, [fol. 2481] on the basis of its promulgation in the Cominform's official organ and viewed against other evidence of record, including issues of *For a Lasting Peace, for a People's Democracy*, expresses the views and policies of the Cominform. We shall briefly set forth the aspects of this report which show the continuation of the pre-existing policies and programs of the world Communist movement and hence evidences the continuation of that movement.

The basic concept of two antagonistic world camps and their composition is continued by the Cominform:

"For the past two years, two lines in world policy have become even more clear and sharp—the line of the democratic, anti-imperialist camp headed by the U.S.S.R.—the camp waging a persistent and consistent struggle against imperialist reaction, for peace between peoples and for democracy, and the line of the imperialist, anti-democratic camp headed by the U.S.—the camp which has as its main object the enslavement of other countries and peoples, the forcible establishment of Anglo-American world domination, destruction of the forces of democracy and the unleashing of a new war. The struggle between these opposite camps has sharpened. . . ." (Pet. Ex. 249, p. 2.)

The national Communist Parties of the world, including those in "capitalist" countries, continue to be aligned in the world camp of peace led by the Soviet Union, and are considered as having gained in strength and influence "despite the rabid anti-Communist witch-hunt carried on by the entire camp of world reaction." (*Ibid.*, p. 3.)

<sup>56</sup> Petitioner's expert witness Mosely identified M. Suslov as an authoritative spokesman for the Soviet Union, having served as an alternate member of the CPSU Politburo and as a member of the Organization and Propaganda Committees of the CPSU Central Committee. Mosely considers this report an authoritative statement of the Soviet Union's views, and we so find.

The national and colonial liberation programs and policies are also set forth and the success of this program as respects China<sup>57</sup> is noted:

"The growth and consolidation of the anti-imperialist forces are further borne out by the great successes of the national liberation movements in colonial and dependent countries.

"An historic victory was won by the Chinese people who overthrew the Kuomintang regime of national betrayal, colonial exploitation and feudal oppression. [fol. 2482] "The creation of the People's Republic of China strikes the most severe blow at the predatory designs of United States imperialism . . .

"The inclusion of China in the family of democratic peace-loving States signifies a further change in the correlation of forces in the international arena in favour of the camp of democracy and peace and extends and consolidates the front of peace." (Pet. Ex. 249, p. 3.)

The tactic of utilizing the national independence movements by linking them with a united front shibboleth, formerly "anti-fascism" and now "peace," is also specified as the duty of national Communist Parties, particularly those in capitalist countries:

"The duty of Communist and working class parties in capitalist countries is to merge the struggle for national independence with the struggle for peace . . . to rally and consolidate all democratic patriotic forces in each country round the slogans of eliminating the shameful U.S. bondage . . .

"The Communist and Workers' parties should carry high the banner defending the national independence and sovereignty of their countries." (Pet. Ex. 249, p. 3.)

The leadership of the Soviet Union and the continuation by the Cominform of its "peace" policy are also shown:

<sup>57</sup> This program concerning China is discussed in detail *infra*.

"The growth and consolidation of this camp are evident, above all, from the further growth of the might of the Soviet Union which marches at the head of the anti-imperialist camp, at the head of the struggle for a stable peace. \* \* \* The peace-loving foreign policy of the Soviet Union, as well as the foreign policy of the People's Democracies, is a powerful factor strengthening the camp of peace and democracy. \* \* \* The peaceful policy of the Soviet Government arises from the very essence of our Socialist society in which there are no classes interested in wars." (Pet. Ex. 249, p. 2.)

[fol. 2483] Continuation of this international "peace" program and its implementation by Communist Parties of the world, using the united front tactics,<sup>58</sup> to head this struggle and to "give it purposeful and effective direction" while combatting the "Right-Wing Socialist disrupters" is also directed as a central task:

"... the cardinal task of the Communist and Workers' Parties is to draw the broadest sections of the working class into the ranks of fighters for the cause of peace; to effect firm working class unity; resolutely combat the Right-Wing Socialist disrupters and disorganisers of the working class movement; organise joint actions of various sections of the proletariat on the basis of a joint platform of struggle for peace and for the national independence of their countries." (Pet. Ex. 249, p. 3.)

<sup>58</sup> Cf. in this connection *For a Lasting Peace* of July 15, 1948 (Pet. Ex. 345), concerning the Cominform's censure of Tito which reprints a statement of the Central Committee of the Italian Communist Party that: "Marching toward socialism, our united front employs different forms of struggle, changing according to the concrete conditions. However, the direction of the movement must be the same for each one: in the sphere of theory—Marxism-Leninism, and in the sphere of real forces—the land of socialism [the Soviet Union] which is headed by the Marxist-Leninist Party steered in the battles of the three revolutions and two victorious wars."

"... It is necessary to proceed from the concrete conditions in each country, skilfully combining various forms and methods of the movement with the general tasks.

"... the Communist and Workers' Parties should daily expose the Right-Wing Socialist chiefs as the worst enemies of peace.

/ "At the same time, it is necessary to develop and consolidate, by all means, both co-operation and united action in the struggle for peace with the basic organisations and rank and file of the Socialist Parties ..." (*Ibid.*, p. 3.)

[fol. 2484] Showing continuation of the program and strategy of world communism to utilize the trade unions and the youth and subordinate them to Party ends, using the "peace" issue, is the statement that: "Particular attention should be devoted to drawing into the peace movement trade unions, women's, youth ... organisations." It is emphasized that the trade unions affiliated with the World Federation of Trade Unions are in the camp of peace but that trade unions can be made to do much more, and it is provided that:

"Peace committees at factories and offices ... can and should become the central link in the activity of trade unions in this sphere. \* \* \* Rallying factory and office workers, irrespective of their nationality, party or trade union affiliation, the peace committees must become centres of struggle for universal unity of the working people in defence of peace ..." (Pet. Ex. 249, p. 3.)

The "anti-imperialism" program of the world Communist movement, now emphasizing opposition to the United States' Marshall Plan for Europe, and to an alliance of Western powers in the North Atlantic Pact and NATO,<sup>59</sup>

<sup>59</sup> In this connection, respondent in the *Daily Worker* of June 9, 1952 (Pet. Ex. 495), protested the prosecution of French Communists for conspiring against the internal security of France, charging that this "bears the sign—Manufactured U.S.A." and it went



is set forth, as well as the duties of various national Communist Parties with respect thereto:

"Particular important tasks confront the Communist Parties of France, Italy, Britain, Western Germany and other countries whose peoples the U.S. imperialists wish to use as cannon fodder in realising their aggressive plans.

"Their duty is to develop, with even greater energy, the struggle for peace to frustrate the criminal designs of the Anglo-American instigators of war.

"Alongside the exposure of the imperialist war-mongers and their accomplices, the Communist and Workers' Parties in the People's Democracies and the Soviet Union face the task of further consolidating the camp of peace and Socialism in defending peace and the security of peoples." (*Ibid.*, p. 3.)

[fol. 2485] Evidencing further the existence and the make-up of the world Communist movement, *For a Lasting Peace* of December 30, 1949 (Pet. Ex. 392), hailing Stalin's 70th birthday, reported that "The Communist and Workers' Parties and democratic organisations throughout the world recognise in J. V. Stalin the leader and organiser of their struggle for the interests of the working people" and that greetings were received from the Central Committees of the Communist and Workers' Parties of China, France, Italy, the United States, Britain, Germany, Spain, India, Japan, Poland, Czechoslovakia, Rumania, Hungary, Korea, Bulgaria, Albania, Mongolia, Finland, Trieste, Pakistan, Australia, Brazil, Belgium, Austria, Sweden, Israel, Columbia, New Zealand, Siam, Holland, Luxemburg, Denmark, Switzerland, South Korea, Punjab, Porto Rico, Syria, and others.

Also evidencing the continuation of the world Communist movement, and that one of its chief purposes is to defend and support the Soviet Union, is the Cominform's

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on to emphasize to the French Party: "We know your struggle is our struggle—a common fight against a common enemy—to defeat the North Atlantic war alliance, to prevent the re-nazification and remilitarization of Western Germany, to fight for a Five-Power Pact of Peace and Friendship as the only path to peace and freedom."

promulgation with approbation of the statements of the French Communist Party in *For a Lasting Peace* of March 1, 1949 (Pet. Ex. 333), that: "The Soviet Union has never been and can never be an aggressor against any country"; and that it accordingly would support the Red Army if it marched into France "defending . . . the cause of Socialism." A chain of similar responses from Communist Parties throughout the world occurred and similarly were reprinted in *For a Lasting Peace* of March 15, 1949 (Pet. Ex. 334), and described by the Cominform as voicing "their determination to frustrate the plans of the Anglo-American warmongers and to defend the bulwark of peace—the Soviet Union and the countries of People's Democracy." (Pet. Ex. 334.) The Cominform published excerpts from the statements made by the leaders of the Communist and Workers' Parties of Italy, Great Britain, Norway, Denmark, Mexico, Canada, Finland, Argentina, Australia and Columbia, and stated: "Similar statements were made by the Communist Parties of the United States,<sup>60</sup> Austria, Japan, Cuba, Uruguay and other countries." Under the caption "Communists of All Countries Stand as One" a statement of the Finnish Communist Party sums up the tenor of what the evidence establishes, namely, in the event of war involving the Soviet Union against the so-called imperialist powers, "the duty of all Communists and defenders of peace is to help the Soviet Union and other countries attacked." (Pet. Ex. 334.) [fol. 2486] Further in this connection, respondent at its 15th National Convention, held in December of 1950, received communications from Communist Parties throughout the world, including those in the Soviet Union, China, France, Italy, Hungary, Poland, Bulgaria, Czechoslovakia, Romania, Germany, Austria, Great Britain, Canada, Mexico, Brazil, Cuba, Spain, Norway, Denmark, The Netherlands, Northern Ireland, Eire, India, Israel, Algeria, Ceylon, Trieste, Belgium, New Zealand, Australia and Indonesia, among others. These "greetings" likewise are replete with phrases that reveal the characteristics and leadership

<sup>60</sup> See in this connection Petitioner's Exhibit 331, the *Daily Worker* of March 3, 1949, wherein respondent's leaders Foster and Dennis state that the statements of the French Party discussed above "‘emphatically serve the cause of peace.’"

of the world Communist movement and that respondent has an "internationalist duty" with respect thereto. The following are illustrative:

"... together with you, 800 million people led by the invincible Soviet Union, defend peace and liberty. ...;

"... Your successes are our successes.;

"... your Party will raise still higher the immortal banner of Marxism-Leninism and will honorably fulfill its patriotic and internationalist duty ...;

"... the fight ... for peace and democracy, inspired by the peace-loving Soviet Union and the great Stalin, will win.;

"Your fight, dear comrades, is our fight ...;

"... You have a decisive place in the camp of peace. ...;

"... we pursue the same aims ... we face the same enemy, American imperialism.;

"... Headed by the mighty Socialist Soviet Union and our friend and teacher Joseph Stalin, the world camp of peace is going forward to win ...;

"United by proletarian internationalism under the banner of the great Stalin, we will march victoriously on the road to peace and Socialism.;

"... we are firmly convinced that you ... will fulfill the great task of world significance ...;

"Long live proletarian internationalism!;

[fol. 2487] "Your invitation confirms that proletarian internationalism, in spite of hate, persecution and terror, is a living reality. ...;

"Our fight for peace, independence and freedom is directed against the same enemy as you fight.;

"... We pledge our maximum contribution to the peace movement headed by the Soviet Union.;

"Long live the solidarity of the working people in the whole world ... for the triumph of the ideas of Marx, Engels, Lenin and Stalin!" (Pet. Ex. 376, pp. 229-253.)

### c. EFFECTIVENESS OF WORLD COMMUNIST MOVEMENT

Illustrating that the above-discussed policies and programs of the world Communist movement as effectuated by Communist Parties throughout the world, including respondent, have resulted in the actual establishment of dictatorships of the proletariat controlled by a national Communist Party in alliance with the Soviet Union is the evidence concerning China and Eastern Europe.

The perspective of world Communist policy concerning China as stated by Malenkov in a report to a meeting of the Moscow Soviet in November 1949 (reprinted in *For a Lasting Peace*, Pet. Ex. 231), as follows:

"In 1923 Lenin said the issue of the world struggle between capitalism and Communism depends, in the final analysis, on the fact that Russia, India, and China constitute the overwhelming majority of the population of the world and that this majority was being drawn with extraordinary rapidity into the struggle for its liberation." (Pet. Ex. 231, p. 2.)

As shown by the various Congresses of the Comintern through the years, it was constantly emphasized that practical support must be rendered the Chinese national liberation movement and the Chinese Communists by Communist Parties throughout the world.<sup>61</sup>

[fol. 2488] In this connection, petitioner's witness Gitlow, substantiated by official Party minutes (see, e.g., Pet. Exs. 24, 39, 55, 78, 81, 82, 90, and 91), shows that during the 1920's respondent, as an integral part of the world Communist movement and as a section of the Comintern, resolutely supported the Communist movement in China and attacked and opposed in its propaganda and agitational activities the United States and Great Britain as imperialist interventionists in China. It is established that this was to further the activity of the Communist International in China.

<sup>61</sup> For example, the *Resolutions* of the Seventh World Congress of the Comintern, held in 1935, directed: "In China, the extension of the Soviet movement and the strengthening of the fighting power of the Red Army must be combined with the development of the people's anti-imperialist movement all over the country." (Pet. Ex. 137, p. 35.)

The importance of respondent's activities is indicated by the fact that in 1927 the Comintern specifically directed that respondent charge the United States and Great Britain with intervention in Chinese affairs and attack Chiang Kai-Shek, and the *Daily Worker* of September 6, 1927 (Pet. Ex. 24), reprinted a cable sent by respondent to the Comintern, wherein respondent pledged "to fight more effectively for . . . the Chinese Revolution." Earl Browder, having been assigned to Comintern activities in China, was recalled by the Comintern and installed by Stalin as leader of respondent in resolving a factional dispute in 1929. He remained respondent's principal leader until 1945.

In a resolution adopted by its Central Committee in 1935, respondent recognized the new united front tactics of the Comintern's Seventh World Congress as a means "to render the utmost assistance to the national liberation movements, especially in China." (Pet. Ex. 185, p. 1184.) In 1941 respondent had as a slogan for action: "*All aid to the Chinese people fighting for their national independence!*" (Pet. Ex. 199, p. 682.)

Petitioner's witness Moseley establishes that the Nationalist government of China was in control of certain Chinese provinces and the people's government led by the Chinese Communist Party was in control of other areas immediately following the Japanese surrender, and that they carried on negotiations for a unified government and army. The Soviet Union and the United States recognized the Nationalist government as the legal representative of all China; however, the Soviet Union and respondent urged support of the position advanced by the Chinese Communist Party. Beginning about 1948 the Chinese civil war commenced and the Soviet Union supported the Chinese Communists in this war, and afterwards immediately recognized the people's government established by the Chinese Communist Party.

Respondent's views and policies on these matters were similar to those of the Soviet Union. For example, in late 1945 the Party directed its members, as one of its "Next Tasks," to: "Press for a united and free China [fol. 2489] based upon the unity of the Communists and all other democratic and anti-Japanese forces"; and to

"Give full military aid to the Chinese guerillas led by the heroic Eighth and Fourth armies." (Pet. Ex. 210, p. 822.)

In a cablegram (Pet. Ex. 233) sent on December 6, 1948, "*To the victorious fighters and leaders of the People's Liberation Army, led by the great Communist Party of China and its helmsman Mao Tse-tung,*" respondent stated:

"Your mighty military advances . . . are each day . . . restricting and weakening the camp of imperialism. \* \* \* your victories mean defeats not only of the hated Chinese reactionaries but also for Wall Street imperialism, the most dangerous foe of national freedom, peace and democracy in the postwar world. \* \* \* Be assured, dear comrades, we shall play our part in the united mass struggle for . . . stopping Wall Street's imperialist intervention in China . . . We approach all of our work and policy—strengthened by your valor and successes and imbued with the great spirit of international solidarity and co-operation—invigorated by the knowledge that you, our heroic Chinese comrades . . . playing a leading role in the world-wide anti-imperialist camp, headed by the Socialist Soviet Union, are advancing the causes of national liberation, peace, democracy and social progress." (Pet. Ex. 233, pp. 1046, 1140.)

In 1949, as part of its activities concerning China, respondent's National Education Department issued a "Discussion Outline and Material for Classes" entitled "World Significance of the Events in China," where the "International Significance of the Victories of the Chinese Revolution" are discussed as aiding "the progressive anti-imperialist forces in the United States as well as all other people who are fighting American imperialist exploitation." (Pet. Ex. 399, p. 6.) Under the heading "Program of Action," the Party instructs that: "*It is now the task of all American progressives to urge and work for the recognition and support of the emerging democratic coalition government of New China*" (*ibid.*, p. 13); and that: "Action on China must be in terms of struggle against whole U.S. imperialist program." (*Ibid.*, p. 14.)

Under the caption "*The Chinese people are helping us defeat our common enemy—American monopoly,*" the "Spe-



cial responsibilities of the Communist Party" are set forth as being "to arouse the people to render direct and determined support to the liberation movement of the oppressed [fol. 2490] peoples against the imperialism of 'their own country.'" (Pet. Ex. 399, p. 14.) Under the title "*Actions proposed*," a number of activities and tactics are outlined for the Party, such as: "Plan an effective program of action for your club on the China issue. \* \* \* Connect the China issue with our inflation at home and with the overwhelming military expenditures . . ." (*Ibid.*, p. 15.)

The Soviet Union, in a *Pravda* editorial of October 1949 entitled "The Historic Victory of the Chinese People" (Pet. Ex. 230), shows, as does respondent, that the program, policies and support of the world Communist movement, led by Stalin, has guided and aided the Communist Party of China to obtain power:

"The great geniuses of humanity, Lenin and Stalin, foresaw the inevitable upsurge of revolution in China. They elaborated the doctrine of national-colonial revolution in the epoch of imperialism, which occurs under the leadership of the working class and under the banner of internationalism—a doctrine which has taken its place in the treasure house of Marxism-Leninism. In the profoundest scientific manner, Comrade Stalin analyzed the character, the features, and the conditions of the Chinese anti-imperialist, anti-feudal revolutionary victories. The Chinese Communist Party, guided by the scientific theory of communism, is the main force in the struggle for national independence and for the victory of the people's democracy in China. \* \* \* The historic victory of the Chinese people is another tremendous blow to the entire system of imperialism . . . *This victory augments the forces . . . headed by the great Soviet Union.*" (Pet. Ex. 230, pp. 612-613, emphasis added.)

Malenkov, in reporting to the Moscow Soviet in November 1949 (Pet. Ex. 231, *supra*), also declared that: "Life has fully confirmed Comrade Stalin's prediction"; and that "equipped with the victorious Marxist-Leninist teaching,

the Communist Party of China proved equal to its historical mission." (*Ibid.*, p. 2.)

As shown by the *Daily Worker* of October 4, 1949 (Pet. Ex. 234), respondent, in a message to Mao Tse-tung, hailed "the formation of the Central Government of the People's Republic of China" as "an historic and glorious event which heralds . . . the defeat of Wall Street's criminal policy of reactionary intervention in the internal affairs of the great Chinese people."

[fol. 2491] Party leader Betty Gannett in the October 1951 issue of *Political Affairs*, in an article entitled "The Second Anniversary of the Chinese People's Republic" (Pet. Ex. 486), openly proclaims that: "The national-liberation struggle in China was victorious because it was led by . . . the Chinese Communist Party, and its helmsman Mao Tse-tung," and was "*unconquerable because it had the enthusiastic support of the peace-loving, democratic camp throughout the world, above all, the fraternal friendship and aid of the Union of Soviet Socialist Republics, beacon of the oppressed and exploited the world over.*" (*Ibid.*, p. 42, emphasis added.) Stalin's "teachings" on the "character and tasks of the Chinese Revolution" (*ibid.*, p. 39) are also praised by respondent's leader Gannett as of substantial aid and she, too, shows that "proletarian internationalism" continues, as before, to signify alliance with the Soviet Union. (*Ibid.*, pp. 39-40.) Respondent also maintained the same views and policies as the Soviet Union in relation to and involving the seating of Communist China in the United Nations and its participation in the Korean War. See "Nondeviation," *infra*.

The machinations of the world Communist movement's united front tactics in calling for the formation of a coalition government including Communists in a given country and their taking control of the government by subverting the other political elements in the coalition is further graphically illustrated by the countries of Central and Eastern Europe occupied by the Red Army after World War II.<sup>62</sup>

<sup>62</sup> See in this connection Dimitroff's *The United Front* (Pet. Ex. 149); wherein it is prophetically stated: "It may be that in a number of countries the united front government will prove to be one of the most important transitional forms . . . to the 'pro-

Immediately following the end of World War II, coalition governments which included a Communist Party were established in Czechoslovakia, Roumania, Bulgaria, Hungary and Poland. Petitioner's expert witness Mosely and documentary evidence show that during the period from 1945 to 1947 both the Soviet Union and respondent supported these coalition governments and the role of the national Communist Parties within them, but at the same time accused the United States and Great Britain of striving to destroy democracy in these countries and to extend their so-called imperialist control over them.

[fol. 2942]- Witness Mosely, substantiated by documents, further established that in Hungary in the last week of May 1947 the major change in government occurred when the Communist Party of Hungary and those ministries which it controlled, including the Ministry of Interior which controlled the police, effectively destroyed the party organizations of other parties which had been members of the coalition government.

In the case of Roumania, major changes toward completion of Communist control came in August and September of 1947, when the principal non-Communist members of the government were removed. In the case of Bulgaria, a turning point also occurred May 1947, when the non-Communist parties were forced to disband themselves. In Czechoslovakia, a coalition government existed from October 1944 to February 1948, when the Czechoslovakian Communist Party took over control of the country and other political parties were dissolved or dissolved themselves.

The attitude of the Soviet Union in relation to the political affairs of Bulgaria, Roumania, Hungary, and Czechoslovakia was to encourage the gain in power by the various national Communist Parties. The Soviet position was that

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*letarian revolution,' i.e., to the overthrow of the bourgeois dictatorship." (Ibid., p. 75.)* Dimitroff makes it plain that: "Final salvation this [united front] government cannot bring" (*ibid.*, p. 76), and he instructs that: "If our parties are able to utilize in Bolshevik fashion the . . . formation and maintenance in power of such a government for the revolutionary training of the masses, this will be the best political justification of our policy in favor of the formation of united front governments." (*Ibid.*, pp. 76-77.)

these governments were expedients for the national Communist Parties to increase their power at the expense of other parties in such coalitions and to establish a dictatorship of the proletariat. Respondent adhered to the Soviet policy in regard to these governments and attacked the policy of the United States toward them as imperialistic.<sup>63</sup>

That the strategy and tactics for such activity by Communist Parties of the world were laid down by the Seventh World Congress of the Comintern and continue into the present as the policy and program of the world Communist movement is shown by respondent's leader William Z. Foster, writing in *Political Affairs* of June 1950 (Pet. Ex. 219) on "People's Front and People's Democracy." Foster sums up what the record establishes in this connection, namely, that:

"The substance of the new tactical orientation of the Comintern was twofold: (a) to provide an anti-fascist, anti-war program and organizational form broad enough to encompass the mighty democratic masses that had been set in motion politically by the capitalist crisis and the fascist war threat; and (b) to make provisions for the Communists, under specific [fol. 2493] conditions, to participate in people's front governments that could develop out of the anti-fascist, anti-war struggle. These new tactical concepts, needless to reiterate, were in full harmony with the whole body of Marxist-Leninist principles." (Pet. Ex. 219, p. 19.)

Concerning the establishment of the "People's Democracies" in Central and Eastern Europe, Foster recognizes that "in preventing European counter-revolution from attacking the new People's Democracies, the Soviet Army played the decisive role." (*Ibid.*, p. 27.) He further clearly shows the utilization of the world Communist movement's

<sup>63</sup> In the section of this Report entitled "Nondeviation," we treat with the similarity of views and policies of respondent and the Soviet Union on a wide range of matters, some pertaining specifically to a particular "People's Democracy" and others, such as the Marshall Plan and NATO, pertaining to these countries as a bloc of the Soviet-led world camp.

united front tactics and the aid of the Soviet Union in setting up these Communist dictatorships, stating:

"... While they were forms of the proletarian dictatorship from the outset they grew and consolidated themselves in revolutionary struggle against capitalist reaction. At first the governments of the People's Democracies were made up of broad coalitions of all the parties that generally had combatted fascism during the war. . . . The strong leaders of the coalition governments were the powerful Communist Parties. . . . *with the assistance of the U. S. S. R.*, all went through a rapid process of strengthening and consolidating themselves. The Communist Parties grew tremendously and finally brought about an amalgamation with the Social-Democratic parties. . . . The several coalition governments systematically purged the armies, police forces, state bureaus, schools, industries, etc., of reactionary leadership. *The bourgeois elements were forced out of the governments and their parties were largely dismantled.* The program for the nationalization of industry, the break-up of the big estates, etc., was pushed with great vigor. This was no mere automatic consolidation of the People's Democracies. It was the sharpest form of class struggle, reaching the point of civil war in some countries—Poland, for example. . . ." (Pet. Ex. 219, p. 27, emphasis added.)

In conclusion of this phase of the evidence, we find that the present world Communist movement was first manifested organizationally by the Third Communist International and was organized and led by the leaders of the Soviet Union; that it internationally implemented basic Marxist-Leninist policies and programs designed to foster the growth and increase the strength of the Soviet Union and to establish in countries throughout the world in alliance with the Soviet Union so-called dictatorships of the proletariat, which constitute in reality dictatorships of the Communist Parties; that the principal international Communist policies and programs, and the strategy and tactics for implementing them to achieve these ends, involve the national liberation and the colonial



movements, national political activities, labor unions, youth, the "anti-imperialism" and "peace" programs, the adherence to Marxism-Leninism and constant struggle against ideologies considered inimical to it, and the utilization of the united front tactics, leading to the consolidation of governmental power in dictatorships of the proletariat; that the organizational form effectuated by the Comintern was abandoned by the Soviet Union in 1943, though leaving the world Communist movement intact in program, policy and strategy under the hegemony of the Soviet Union; that the Cominform, organized in 1947, was another apparatus of the world Communist movement, and perpetuated under the leadership of the Soviet Union the basic policies, programs, and strategy and the united front tactics of the world Communist movement; that, working in conjunction with national Communist Parties throughout the world, the Soviet Union has directed the strategy and tactics and has aided such Parties to acquire governmental power and establish dictatorships in the countries of Eastern and Central Europe and China; and that the objective of this movement is to establish similar dictatorships in non-Communist countries throughout the world.

What the evidence establishes concerning the continuation of the world Communist movement, intact in policy, program, strategy and leadership, is succinctly illustrated by respondent's leader William Z. Foster, writing in *Political Affairs* of June 1950 (Pet. Ex. 219), as follows:

"Political strategy and tactics, as Marx, Lenin and Stalin taught us, are not permanent, all-enduring but must evolve to meet changing circumstances. It is not surprising, therefore, that the tactics laid down at the Seventh Congress, while continuing to be fundamentally correct, have, in the ensuing fifteen stormy years, undergone a certain change, growth and development, with the fundamental change in the world situation. It would be absurd to think that it could possibly be otherwise. *Among the later developments may be mentioned: the line of national and international unity establishment of the postwar People's Democracies of followed during the war, the new policies used in the*



*Eastern Europe, Communist participation in the coalition governments of France and Italy and the victorious [fol. 2495] developments of the great Chinese Revolution, the main line of which was stated by Stalin as much as 24 years back. And no doubt other important tactical developments will take place in Communist policy as the world struggle for Socialism proceeds. It is important to note here that all the tactical, and sometimes strategical, changes that have taken place during the past 15 years are in accord with the solid Marxist-Leninist line of the famous Seventh Congress of the Comintern.*<sup>64</sup> \* \* \* *But, regardless of tactical variations that may be necessary as the class struggle proceeds, the road to Socialism remains the same—through the defeat of the capitalist class and the establishment of the dictatorship of the proletariat.”* (Pet. Ex. 219, pp. 19-20, emphasis added.)

As subsequent portions of this Report will establish further, respondent practically since its inception has been an active integral part of this world movement. In view of the evidence above set out, it is reasonable to conclude that respondent will, if circumstances were to permit, initially proceed toward its goal in the manner of the Communist Parties of the so-called People's Democracies of Eastern Europe. When taken in context with the rest of his article, quoted in part above, this is shown by Foster's statement that: "Although the establishment of a people's front or democratic coalition government is not yet upon the immediate political agenda in the United States, nevertheless, as Marxist-Leninists, we can already profitably understand our general tasks in such an eventuality." (Pet. Ex. 219, p. 26.)

We find (1) that there exists a world Communist movement, substantially as described in section 2 of the Act, which was organized by the Soviet Union and has as its primary objective the establishment of Communist dictatorships of the proletariat in all countries throughout the world, including the United States, and (2) that the direc-

<sup>64</sup> Thus, in 1950, respondent is admittedly effectuating the 1935 Seventh Congress, see fols. 2468-2474, *supra*.

tion, domination and control of this movement is vested in, and is exercised by, the Soviet Union.

[fol. 2496]

### 3. RESPONDENT'S INTERNAL ORGANIZATION

Respondent calls itself the "Communist Party of the United States of America" which conforms with the plan of Marxism-Leninism for a "National Communist Party" or "a Party of the Communists" in each country or nation, and which also conforms with a requirement of the world Communist movement, while organized under the name of the Communist International, that each member party call itself the "Communist Party" of its particular country.<sup>65</sup> We examine below significant organizational principles of respondent in the light of those prescribed in Marxism-Leninism and by the Communist International. First, it is pertinent to make findings concerning the organization and development of respondent throughout its existence.

#### a. COMMUNIST INTERNATIONAL AND COMMUNIST INFORMATION BUREAU

We have previously set forth that respondent joined the Communist International shortly after it was constituted and admittedly participated therein until 1940. Respondent offered no substantial evidence concerning this period of its activities, contending that this period is irrelevant, primarily because of an announced disaffiliation from the Communist International in 1940. The circumstances of the disaffiliation, as found later herein, show that there was no fundamental or significant change in respondent's relationship to the world Communist movement. The past activities are clearly relevant and due to their nature are material.

<sup>65</sup> Our findings under the heading "Marxism-Leninism" contain a number of the characteristics for the Party. Stalin, writing in *Foundations of Leninism*, states that "Without such a party it is useless even to think of overthrowing imperialism and achieving the dictatorship of the proletariat." (Pet. Ex. 121, p. 108.) See also the "Conditions" of membership in the Communist International *supra* fols. 2452-2454.

The oral testimony and official documents of respondent and of the Comintern show that respondent was under the complete control and direction of the Comintern. Gitlow was a top official of respondent and in the late 1920's a member of the Executive Committee of the Communist International. He stated unequivocally that the Comintern controlled all major policies of respondent. Kornfeder, also a functionary of respondent and who attended the Sixth Congress of the Comintern held in Moscow, corroborated this stating that he knew of no instance during his experience, which lasted until 1934, when respondent deviated from Comintern instructions.<sup>66</sup> Nowell, based on personal experience as a member of respondent and personal contact with the Comintern, as well as what he was instructed while attending the Lenin School in Moscow in 1932, stated that the decisions of the Comintern were binding on respondent. Honig testified to Comintern directives which were carried out by respondent.<sup>67</sup> We have heretofore set forth the finding that respondent accepted and became bound to the "21 Conditions" of membership in the International.

Among the specific instances of record, much of which is uncontroverted documentary material, showing the control exercised over respondent by the Comintern were: a Comintern decision in 1924 which resulted in the amalgamation of various Communist factions in the United States into the single Communist Party; a decision by Joseph Stalin in 1929, adopted by the Comintern, which expelled certain top officials of respondent and designated other individuals as leaders of respondent; advance approval by

<sup>66</sup> The witness Kornfeder became belligerent at times and his conduct as reflected by the record caused us to examine his testimony with commensurate caution. This scrutiny leads us to the conclusion that while upon occasion his conduct on the stand was unbecoming his testimony was strongly corroborated by documents and oral testimony, and in essence should be credited.

<sup>67</sup> The testimony of Honig on cross-examination resulted in our scrutinizing his entire testimony with extreme care and only where findings are based in whole or in part on his testimony is he credited. • Needless to say, in such instances we feel the testimony warrants reliance.

the Comintern for the holding of Communist Party conventions in the United States; Comintern instructions in 1927 that respondent charge the United States and Great Britain with intervention in Chinese affairs and to attack Chiang Kai-Shek; Comintern decision directing respondent to work for the formation of a farmer-labor party in the United States and a subsequent change directing respondent to go into elections with the Communist Party ticket; and, advance approval by the Comintern of members of respondent who were sent to training schools in Moscow. It was stated by respondent in 1934 that "the Comintern spoke to the American Party with authority and wisdom." (Pet. Ex. 126, p. 246.) In 1929 respondent stated in an official Party document:

"One who fights the Soviet Union and the Comintern is an agent of capitalism directed against our Party in its campaign to mobilize the workers against imperialist war and for the defense of the Soviet Union." (Pet. Ex. 108, p. 6.)

The Soviet Union formed, controlled, and dominated the Communist International (*supra*, fols. 2450-2451); the Communist International for over 20 years constituted an organizational instrumentality through which the Soviet Union dominated and controlled respondent.

[fol. 2498] Respondent makes much of the fact that it "disaffiliated" from the Communist International in 1940. There was no dispute that respondent in 1940 announced its disaffiliation for the stated purpose of avoiding registration as a foreign agent under the Voorhis Act of October 17, 1940. An issue is the effect of the disaffiliation.<sup>68</sup>

Meyer showed without rebuttal that the delegation from the Illinois-Indiana district of respondent to a special con-

<sup>68</sup> In determining whether there has in fact been any fundamental or significant change in respondent's relationship to the Soviet Union and the world Communist movement since the announced disaffiliation it is material, of course, to examine respondent's subsequent conduct and activities. It is also material, however, to determine whether the disaffiliation was intended as a break from them and disagreement with the purposes and objectives thereof.

vention of respondent held to discuss the disaffiliation reported to a State Committee meeting the disaffiliation was a matter of expediency, that it changed nothing fundamentally or significantly, and that it had to be done to preserve the legality of the Party. Lautner corroborated this. He was a delegate to the special convention and described the understanding of the convention to be that the disaffiliation was an expediency which in no way affected the Party's attitude on the question of "proletarian internationalism."

Respondent put in evidence a copy of the report made by its then general secretary, Earl Browder, at the special convention. The Browder report makes clear that the disaffiliation was but an expediency to avoid registration under the Voorhis Act and contains nothing which negatives an intent to continue as before the principle of "proletarian internationalism."<sup>69</sup> Various passages of Browder's report indicate an intent to end only the "formal" and "organizational" connection with the Communist International but not to alter the preexisting fundamental relationship. Illustrative of this is that the report states the disaffiliation would not even be considered if it were thought that it would cause the Party to "waiver" or "vacillate" in carrying out "the internationalism founded by Marx and Engels, and brought to its great, historically decisive victories under the leadership of Lenin and Stalin," and to which "the life of every Communist is unconditionally consecrated." (C. P. Ex. 13.) Also, the Browder report, by characterizing the Voorhis Act as "an extreme example of the most vicious and oppressive *Exceptional Laws*" (*ibid.*, p. 10, emphasis added) indicates that the *organizational* disaffiliation was in accord with a Comintern "Condition" that "In every country where, in consequence of martial law or of other *exceptional laws*, the Communists are unable [fol. 2499] to carry on their work lawfully, a combination of lawful and unlawful work is absolutely necessary." (Pet. Ex. 8; p. 28, emphasis added.)

Earlier in the same year the disaffiliation was announced, respondent set forth in its official organ a resolution adopted

<sup>69</sup> See fol. 2460, footnote, re "proletarian internationalism."



by respondent together with the Communist Parties of various other countries relative to the distribution and study of the Soviet Union publication the *History of the Communist Party of the Soviet Union*. This resolution dealt with the importance of the *History* for "the Communist world movement" and stated the *History* "is intended to play—and will undoubtedly play—a very important role . . . in the consolidation of the Sections of the Communist International." (Pet. Ex. 296, p. 73.) We note in this connection that in August 1951 respondent quoted with approval in *Political Affairs* a statement by the leader of the Communist Party of China that the *History of the Communist Party of the Soviet Union* "is the highest synthesis, the highest generalization of the world Communist movement." (Pet. Ex. 481, p. 35.) In April 1940, only a few months before the announced disaffiliation, respondent again affirmed its role as a part of the Communist International and its avowed loyalty "to the cause of proletarian internationalism" as evidenced by an article in *The Communist* which stated, among other things:

"... our Party, on the whole, is . . . from top to bottom united around its national leadership and the Communist International more solidly and staunchly than ever before." (Pet. Ex. 436, p. 406.)

Moreover, respondent's constitution as amended in 1942 included the Communist International, together with Marx, Engels, Lenin, and Stalin as the enunciators of the principles under which respondent seeks to establish "socialism." (Pet. Ex. 328, pp. 5-6.) There is the further consideration that the Communist International was Marxism-Leninism in action and respondent indicates no break with Marxism-Leninism, in fact quite to the contrary. (See "Marxism-Leninism," *supra*.) Also, as will become apparent, respondent's policies and activities continued to accord with those laid down and accepted in the "21 Conditions" of membership in the International.

Flynn, testifying for respondent, was a member of respondent's National Committee when the disaffiliation was discussed. She in effect agreed on cross-examination that the goals and aims of the Party passed unchanged through the disaffiliation and stated:



"... we were not disaffiliating in anger, or disaffiliating to fight the Communist Internationale. It was, you might say, a friendly divorce." (Tr. 14002.)

[fol. 2500] It is clear from the foregoing and respondent's subsequent conduct as it unfolds that respondent's announced disaffiliation from the Communist International was for the expediency of avoiding a federal law which the Communists considered an oppressive one, and was done to preserve rather than to end or change substantially respondent's rôle as a part of the international Communist movement.

Upon the dissolution of the Communist International in 1943 in the interest of furthering the world Communist movement, respondent expressed its approval and support of the decision and publicized in the United States the line given by Stalin and other Soviet officials as well as pointing out that the dissolution "must not be mistaken as a sign of weakness or of helpless collapse." (Pet. Ex. 205, *supra*, page 70.) Upon the formation of the Communist Information Bureau in 1947 (*supra*) respondent hailed it as "of great significance" for coördinating activity of the Communist Parties and "making more effective their resistance to the program of imperialist expansion." While pledging to continue to promote the international solidarity of all "anti-fascists and anti-imperialists" and to advance the cooperation "of all peace-loving peoples," respondent concluded that because of "the present political situation in the United States" it would not affiliate with the Cominform. (Pet. Ex. 368, pp. 2, 10.)

The record shows that the Zhdanov report to the formation meeting of the Cominform, reasserting the programs and policies of the world Communist movement earlier enumerated by the Comintern (*supra*), was studied in respondent as "the key to the whole movement" and was used in respondent's schools as a major document stating and explaining the strategic aims of the world Communist movement. (Tr. 6113.) Malenkov's report on that occasion, also dealing with the world Communist movement (*supra*), was printed by respondent in *Political Affairs* and was similarly studied and discussed. The official organ to the Cominform,

published under the name *For a Lasting Peace, for a People's Democracy*, has been made available to functionaries of respondent and to meetings of respondent's members. Philbrick, based on nine years of active membership in respondent, stated that a member could not disagree with a "directive or a position taken by the Cominform" and still remain a member. (Tr. 6178.) We later make additional findings regarding respondent's use of the Cominform official organ.

Gates and Flynn, members of respondent's National Committee, stated that all they know about the Cominform is what they read in the "capitalist" press and the journal of the Cominform; that it never issued directives to respondent; and, that respondent's use of the Cominform organ is to see what is going on in various Communist Parties throughout the world with whom respondent shares common [fol. 2501] interests. Gates was asked on cross-examination whether respondent or the *Daily Worker* or *Political Affairs* ever deviated from the expressed views and policies of the Cominform. He answered to the effect that the Party never deviated from what it considered the best interests of the American people and said "if we have not expressed any disagreement with any views that have been put forward in *For a Lasting Peace*, that is because we believe those views have not been in contradiction to the interests of the American people."<sup>70</sup> (Tr. 13226-13227.)

Although there was no showing that respondent affiliated organizationally with the Cominform, the favorable recognition given by respondent to its formation and the use and reliance made by respondent of important Cominform documents is consistent with the record as a whole in showing that respondent has never repudiated either the policy or program of the world Communist movement and, in fact, continues to follow and apply such program and policy.

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<sup>70</sup> His answers to subsequent questions on cross-examination revealed arrogance and evasiveness. (See for example, Tr. 13227-13228.) The sum of his testimony is contrary to the great weight of the evidence, however, without this and other credibility considerations noted.

Reverting to respondent's organizational form and characteristics, we have heretofore summarized that in 1924 and 1929 respondent was reorganized pursuant to directives of the Communist International. The 1924 reorganization united various Communist factions in the United States into "The Communist Party" thereby fulfilling the "Condition" of the Comintern calling for only one Communist Party in any country. (See *supra* and Pet. Ex. 12.)

The 1929 reorganization followed a solution dictated by Stalin, which was adopted by the Comintern, and accepted by respondent. Lovestone, Gitlow, and others were deposed as leaders of respondent and the leadership placed in a group which included William Z. Foster, present national chairman. The reorganization of respondent was due to a factional dispute which was a reflection of a struggle in the Communist Party of the Soviet Union and in the Communist International between forces led by Stalin and those led by Bukharin. The Foster faction in respondent, representing a minority of only about 10 per cent, supported Stalin whereas the Lovestone-Gitlow faction, representing about 90 per cent, sided with Bukharin. Notwithstanding this, respondent complied with the Stalin-dictated solution. [fol. 2502] The record contains no evidence of subsequent material organizational changes until May of 1944 when respondent's name was changed to the Communist Political Association then changed back in 1945 to the name Communist Party. The change to "CPA" was in the year following the dissolution of the Comintern and, like the announcements on that dissolution, the change was assertedly to promote a peaceful co-existence of the United States and the Soviet Union. While operating under the name "Communist Political Association" there was a de-emphasis on the more militant principles of Marxism-Leninism and the current publications of the Party put forward the so-called "Teheran line."<sup>70a</sup> No evidence was presented by respondent to show a break with the basic principles of the inter-

<sup>70a</sup> Foster opposed the change on the ground it was not in line with the revolutionary position of Marxism-Leninism. His opposition was contained in a letter to the National Committee which was suppressed from the membership at the time and not made known until shortly before the change back to CPUSA.

national Communist movement. The leadership of respondent remained the same.

Relevant to the reconstitution of respondent under the name Communist Party, the record shows that in April of 1945 Jacques Duclos, a spokesman for the world Communist movement, issued a statement the substance and effect of which was that it was a mistake to dissolve the Communist Party of the United States.<sup>70b</sup> Duclos said that: "In truth, nothing justifies the dissolution of the American Communist Party, in our opinion"; a "powerful Communist Party" in the United States is necessary "in the struggle taking place between the progressive forces of the earth and fascist barbarism." (Pet. Ex. 208, pp. 671-672.) The Duclos statement further declared that Browder [a leader of the Communist Political Association] and his supporters were notoriously revising Marxism in the concept of long-term class peace in the United States and harmony between labor and capital.

Following the release of the Duclos statement, it was discussed and studied throughout respondent at meetings called for that purpose. At a State Committee meeting in Ohio, several of the delegates expressed appreciation that [fol. 2503] Duclos had called attention to the Party's deviation from the line. At a meeting attended by Baldwin, Carl Winter, a top leader, told the members that the statement was not Duclos' view alone but that of the European Communists. Blanc was present at a County Committee meeting where Party official Arnold Johnson highly praised the Duclos statement and a resolution was passed to adopt the Duclos statement and revert back to revolutionary tactics. Meyer, at the time a Party official, attended a meeting that had been called following the publication of the Duclos statement. At the meeting Meyer expressed the position that the Duclos "letter" was a policy of war between the United

<sup>70b</sup> The Duclos statement was issued through the official theoretical organ of the French Communist Party, *Cahiers du Communisme*, and reissued in respondent's organ, *Political Affairs* of July 1945. Duclos at the time was a leader of the Communist Party of France and until the dissolution of the Communist International, a member of the Executive Committee of the International. In the world movement he was a significant international figure.

States and the Soviet Union whereupon Meyer was condemned by Party leader Jack Stachel as provocative, revisionist, and liquidationist. Respondent's Executive Board passed a resolution supporting the Duclos statement.

Budenz, as managing editor of the *Daily Worker*, was instructed to print the Duclos statement in the *Daily Worker* and to be very careful on its publication because of its importance. A discussion period was ordered and carried on in the staff of the *Daily Worker* on the Duclos statement which included the evils of revisionism and opportunism that had been condemned by Duclos and how the Party could carry out better their assigned tasks as a result of the necessity of getting rid of revisionism. At one of the staff meetings, the Party functionary serving as advisor on foreign affairs to the *Daily Worker* stated that the Duclos statement on revisionism and for rejection of class peace should be interpreted to mean that socialism could be obtained with the help of the Red Army; Party leader Stachel opposed that position as not specifically in line with the Duclos statement and said it would expose the Party.

Budenz testified that while at the *Daily Worker* office he read part of a letter from Starobin, the *Daily Worker* correspondent attending the United Nations Conference on Organization in San Francisco, which was to the effect that Manuilsky [a leading Soviet Union Communist and Ukrainian representative to the United Nations Conference] had expressed indignation that the American Communist Party had not criticized the American Government leaders more severely, and stated the American Party should observe more carefully the guidance and counsel of the French Communists.<sup>70c</sup>

After preparation throughout the Party, respondent was reconstituted as the Communist Party of the United States of America. Earl Browder, for departing from the ortho-

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<sup>70c</sup> Respondent contends that cross-examination showed that Budenz made inconsistent statements regarding this matter in a book he had previously written and in prior testimony before the House Un-American Activities Committee. We do not read those prior statements as substantially inconsistent and the essence of his testimony on this is credited.



[fol. 2504] doxy of Marxism-Leninism, was branded a "revisionist" and "deviationist" and deposed as the leader. Foster took over as national chairman. Otherwise those who had been officials and leaders of the CPA and the Party before that, with a few minor exceptions, remained the officers and leaders of the reconstituted Communist Party. Upon taking over as national chairman, Foster pointed out the necessity for reemphasizing the revolutionary line of Marxism-Leninism. In a report to the reconstitution convention, subsequently published in *Political Affairs*, Foster declared "Our Party has suddenly reverted to its basic Communist principles" and "As never before, we must train our Party in the fundamentals of Marxism-Leninism." (Pet. Ex. 372, p. 788.)

A subsequent issue of *Political Affairs* (September 1945, Pet. Ex. 210), devoted to the "Present Situation and the Next Tasks, Resolution of the National Convention of the Communist Party, U.S.A., Adopted July 28, 1945," states that the operations of the Party as the Communist Political Association "resulted in a general weakening of Communist activities and in adversely affecting the role and policies of other Marxist parties in the Western Hemisphere"; that "we can appreciate the basic correctness of the sound fraternal, Marxist opinions expressed in the recent article of Jacques Duclos, one of the foremost leaders of the Communist Party of France." (*Ibid.*, pp. 829, 831-832.)

Moreover, the resumption of the name Communist Party of the United States of America in conjunction with the return to revolutionary Marxism-Leninism was a matter of decisive importance just as in 1921 when the naming of the Party was considered "a political question of great importance" since it distinguished respondent as an organization which "has declared a decisive war against the entire bourgeoisie world." (Pet. Ex. 8, p. 31.) This is borne out by Party leader Williamson's report to the reconstitution convention (reprinted in *Political Affairs* for September 1945) concerning the change of name when he stated that:

"... The question of re-establishing the name and form of Communist Party is a question of principle connected with the proper role and functioning of the



Party. The necessary political and organizational corrections that we must accomplish will definitely be aided by resuming the name *Communist Party*;

"... It is necessary to resume the name *Communist Party* to restore the correct Marxist concept and role of a vanguard party of the working class; ..." (Pet. Ex. 209, p. 801.)

[fol. 2505] Respondent did not rebut petitioner's evidence on the 1924 and 1929 reorganizations, *supra*. On the 1945 reconstitution, the testimony of respondent's witness Flynn was to the effect that prior to the Duclos statement membership was falling off and the Browder position was being questioned; that no one on the National Committee said the Duclos statement was a directive or an order; and, that the Duclos statement was of interest as what the leader of a sister Party had to say.

This fails to rebut or explain the importance given to the Duclos statement, the official actions in connection with it, and the speed with which the Duclos criticisms were acted upon—respondent did not produce any of the Party functionaries to contradict or explain the statements attributed to them by petitioner's witnesses, *supra*, nor was any showing made as to why they were not produced. The evidence shows that in this brief period it was the Duclos article that was the foundation of the discussions rather than a self-impelled domestic analysis.

Lautner testified that after the 1945 reorganization, the Party continued to attack Browder, that "Browderism" was considered a danger to the "Marxist-Leninist purity" of the Party. (Tr. 9273.) In January 1950 Lautner called the attention of the National treasurer of respondent to a published statement by Browder asserting that during the 15 years of his leadership in respondent all major policies put into effect had the previous knowledge, consent and active support of the decisive international Communist leadership. The Party treasurer's comment was that "If this is not stool pigeon work on the part of Browder, then nothing is." (Tr. 9278.) Gates, although denying the truthfulness of the statement, conceded on cross-examina-

tion that subsequent to Browder's expulsion, Browder wrote that during the 15 years of the Browder leadership, all major policies put into effect by respondent had the previous knowledge, consent and active support of the decisive international Communist leadership.

We find that twice, in 1924 and 1929, respondent was reorganized pursuant to directives of the Soviet Union; that in 1944 respondent modified its line in conformance with the then line of the Soviet Union as understood by respondent's leader Earl Browder; and, that in 1945 respondent reverted to "its basic Communist principles" (*supra*) and reemphasized Marxism-Leninism upon the issuance of a statement to the effect that it should do so by a leading foreign spokesman of the world Communist movement.

[fol. 2506]

#### b. OFFICIALS OF RESPONDENT

As previously found, Foster became a leading officer in respondent in 1929 as a result of a Soviet Union directive. He has been national chairman since the 1945 reconstitution. A prior letter of his to respondent's National Committee in which he opposed Browder's policies had been suppressed from respondent's membership but his position set forth in the letter was approved in the Duclos statement while Browder's policies were condemned.<sup>71</sup> For a number of years prior to respondent's announced disaffiliation from the Communist International, Foster was an official of the International. He has been to the Soviet Union on numerous occasions on Party business. Foster is recognized throughout respondent as an authority on Marxism-Leninism. In 1951 respondent's organ, *Political Affairs*, rendered homage to Foster, noting his "half-century of battle years," his "abiding loyalty and devotion . . . to the cause of Marxism-Leninism, to the cause of Communism," and his "unshakable confidence in ultimate

<sup>71</sup> Foster told Budenz that he did not push his objections to the formation of respondent as the Communist Political Association but rather refrained from deviating for fear of being expelled. The record does not reveal how Duclos obtained a copy of the Foster letter.

victory." (Pet. Ex. 479, pp. 1, 6.) This evidences the continuity of policy and program throughout the many years that Foster has been a functionary of respondent.

It appears that Foster fits the requirement of leadership Stalin referred to in his 1929 speeches concerning the American Communist Party and the settlement of the factional dispute therein. Among Stalin's statements were:

"The struggle for the winning of the millions of the working masses to the side of Communism must be intensified. The fight must be intensified for the forging of real revolutionary Party cadres and for the selection . . . of individuals capable of entering the fight and bringing the proletariat with them, individuals who will not run before the . . . storm and will not fall into panic, but will sail into the face of the storm. . . ." (Pet. Ex. 145, p. 111.)

Also, referring to the development of the revolutionary crisis in America, Stalin declared:

" . . . For that end we must work in order to forge real revolutionary cadres and a real revolutionary leadership of the proletariat, . . . " (Pet. Ex. 126, p. 247.)

[fol. 2507] In addition to Foster, a number of respondent's other present leaders have been functionaries of respondent since the time of the Communist International, have been to the Soviet Union on Party business, and have been indoctrinated and trained in the Soviet Union on Communist strategy and policies. These leaders have taught in Party schools, written for the Party press, and spoken at Party meetings, on various phases of Marxism-Leninism, including the leading position of the Soviet Union, proletarian internationalism, and the necessity of revolutionary overthrow of imperialist nations, particularly the United States. Among such persons identified in the record are Peters, Stachel, Bittelman, Green, Winter, and Williamson.

Peters was a long-time functionary of respondent in its underground and security work until he left the country

in 1949 after a period of hiding from federal immigration authorities. Among his activities Peters performed liaison between Communist International representatives in the United States and Soviet police operating in the United States. He also was a representative of respondent to the Communist International headquarters in Moscow. In the United States he dealt with Comintern representatives. He used various aliases in the United States. In 1935 Peters told Budenz that the Communist Party was merely "the periscope of a submerged submarine, the submerged party being the conspiratorial part of the Party or the underground Party, which was the most important, that that was the real decisive Communist Party." (Tr. 11878-11879.) Peters has conducted Party classes and prepared study outlines and other material. He is the author of respondent's *Manual on Organization* (Pet. Ex. 145), referred to herein in connection with various issues.<sup>72</sup> In 1949, just prior to Peters' leaving the country, respondent's National Secretariat told him they felt sure he would make his contribution no matter where he worked as a Party leader.

Bittelman authored various Party pamphlets recognizing, explaining, and advancing the policies and programs of the Comintern. The same policies and programs are still the subject of various articles which he writes for use in official Party organs. (See for instance his 1934 and 1951 writings set forth *infra*, fol. 2549, under the subheading [fol. 2508] "National Liberation.") Stachel, Green, Winter, and Williamson are currently members of respondent's National Committee and continue to author articles for the official Party organs on Party policy and programs.

The continuance in office of Moscow-trained leaders of respondent who were functionaries during the period that

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<sup>72</sup> The *Manual* and other Party pamphlets such as *The Communist Party in Action* (Pet. Ex. 144) and *Why Every Worker Should Join the Communist Party* (Pet. Ex. 143) are accepted as reliable evidence of Party program and policy when issued, generally in the 1930's, and during the subsequent years that the evidence shows their continued use in the Party. Other evidence, both oral and documentary, establishes current Party policy and program. It is pertinent to consider, as we do herein, the extent to which present Party policy and program conforms with that set forth in these earlier issued documents.

respondent was an open member of the open, formal organization of the world Communist movement, and the absence of any substantial evidence showing a repudiation by respondent's leaders of the program and policy of the world Communist movement, as well as the fact that Marxism-Leninism continues to be basic to respondent, are all probative of the issues herein. While considering the matter of respondent's leadership, it is pertinent to examine the evidence on foreign Communist representatives who have been in the United States to supervise respondent.

### c. FOREIGN REPRESENTATIVES IN THE UNITED STATES

The reorganization of respondent's leadership pursuant to Stalin's solution for the 1929 factional dispute, *supra*, was supervised by a Soviet Union representative sent to the United States for that purpose. A number of individuals were identified as having in the past been in the United States as representatives from the Soviet Union to supervise the carrying out of various policies, programs, and activities by respondent. Respondent's acceptance of the authority of these foreign representatives was required by the rule of the Communist International that:

"The E.C.C.I. [executive committee] and its Presidium have the right to send their representatives to the various Sections of the Communist International. Such representatives receive their instructions from the E.C.C.I. or from its Presidium, and are responsible to them for their activities. Representatives of the E.C.C.I. have the right to participate in meetings of the central Party bodies as well as of the local organizations of the Sections to which they are sent. . . . Representatives of the E.C.C.I. are especially obliged to supervise the carrying out of the decisions of the World Congresses and of the Executive Committee of the Communist International." (Pet. Ex. 125, pp. 89-90.)

Among the foreign representatives specifically identified are Gerhardt Eisler (sometimes known as Edwards and Hans Berger), Pogany (John Pepper), Golos, Peterson,

Frank Miller, P. Green or Gussey, Yusefovich, Merker or Wagner, Walettsky, and Allen. Minutes of respondent's governing bodies during the 1920's show a number of occasions where one or more of these identified foreign representatives participated in the meetings. (See, for example, Pet. Exs. 67, 88, 95, 98.)

[fol. 2509] Lautner's experience was that no one in respondent questioned decisions of Comintern representatives; that when such a representative spoke at Party meetings it was accepted as the Party line. Kornfeder's experience was similar. Gitlow stated that Comintern representatives had "extraordinary powers" over respondent and became voting members of all of respondent's leading committees. (Tr. 93.) The foreign representatives have at times used various names and aliases.

Eisler was the subject of considerable testimony and, on this record, the most prominent of the foreign representatives. Kornfeder originally met Eisler in Moscow and knew him as a representative in the United States in 1933 with whom he discussed respondent's infiltration of the American Federation of Labor and the Railroad Brotherhoods. Eisler warned Kornfeder of serious consequences if he spoke against a new trade union policy at a national convention of the Party in 1934. Kornfeder disregarded Eisler's warning and was told to repudiate in the Party press within 60 days what he had said. He was later expelled from the Party for not repudiating.

Meyer met in Party meetings with Eisler as a Comintern representative in this country in the 1930's and met Eisler again in 1944. Lautner attended Party meetings in the 1930's at which Eisler was present as a Comintern representative. To Lautner's knowledge, Eisler undertook to influence respondent's activities subsequent to 1945 and was seen by Lautner at the Party headquarters in 1949. Budenz testified that Stachel, a high Party leader, received orders from Eisler in 1943 and 1944. Stachel, convicted in 1949 of violating the Smith Act, see *infra*, fol. 2602, was not called to deny this. Dennis, also a high Party official, told Budenz in the latter part of 1942 that Eisler was "the equivalent to the representative of the Commu-



nist International." <sup>73</sup> (Tr. 11858.) Eisler was in the United States in 1949 and fled the country while on bail pending the appeal of a conviction for false swearing. Eisler now holds a high leadership position in the East German Government.

[fol. 2510] Flynn and Gates testified to the effect that to their knowledge while functionaries of respondent, the Party has not received any directives or instructions from any representative of the Communist Party of the Soviet Union or the Communist International. Gates, although asserting that Eisler never gave him any directives or instructions and denying that he ever knew Eisler as a Comintern representative, admitted that he met Eisler in the United States in 1946, that they lived only a few blocks from each other, that he had a number of meetings with Eisler, and that Eisler sometimes came to respondent's headquarters. Flynn, likewise denying that Eisler was a Comintern representative, saw him rather frequently after his arrest in 1949 explaining this was because of the "co-incidence" that Eisler lived close to her in Manhattan for a while. She spoke and wrote in defense of Eisler and

<sup>73</sup> Respondent argues that this Budenz testimony should not be believed because cross-examination brought out that Budenz testified in the 1947 trial of Eisler (for making false statements in an application for a passport) but did not there state that Eisler was a Comintern representative. Budenz stated, however, that he did not then know an issue at the trial was that Eisler had been such a representative. Further, the indictment contained no such charge and the opinion of the trial court states:

"... All evidence of the so-called Communist International which came into the case, and much was excluded, was simply explanatory of and incidental to testimony and evidence properly admitted. Repeatedly throughout the trial it was emphasized by the court, and I am confident understood by the jury, that the existence or nonexistence of the Communist International was in no sense an issue in the case. . . ."  
(75 F.Supp. 640 at 642.)

While the Court of Appeals took note of evidence that Eisler was a Communist International representative in affirming his conviction (176 F.2d 21), the speculation respondent would have us engage in is too tenuous to support disregarding such testimony. The quoted statement of the trial court illustrates, without more, the pitfalls.

participated in a Madison Square Garden meeting arranged after his arrest.

The evidence preponderates to establish the presence in the United States of Communist International representatives prior to the early 1940's who acted with authority in respondent. Further, the particularity and personal character of the credited testimony of petitioner's witnesses preponderates over the testimony of respondent's witnesses that they did not know Eisler as a foreign representative. We find that as of 1945 Eisler was shown to be acting as an authoritative foreign Communist representative to respondent.

Eisler is the only foreign representative shown by the record to have been in the United States subsequent to the announced dissolution of the Communist International. Respondent ceased open affiliation with the Comintern to avoid identification as a foreign representative in the United States and the Comintern as an open organization was dissolved in 1943 for Soviet tactical reasons. The absence of further showing as to foreign representatives does not itself, in the context of the record, indicate any change in respondent's nature or character.

#### d. DISCIPLINE AND DEMOCRATIC CENTRALISM

Having found that the requirement of iron discipline and the practice of "democratic centralism" are among the basic principles of the world Communist movement (*supra* [fol. 2511] fols. 2427-2429, and fol. 2456), we consider at this point the evidence on their application to respondent.<sup>74</sup>

<sup>74</sup> Section 13(e)(6) of the Act provides that there shall be considered the extent to which the leaders and members of an organization alleged to be Communist-action are subject to or recognize the disciplinary power of the foreign government or organization controlling the world Communist movement. The petition alleges that respondent's leaders have been and are subject to the disciplinary power of the Soviet Union, the Communist Party of the Soviet Union, the Communist International, the Communist Information Bureau and other spokesmen of the world Communist movement, and that this power has been exercised principally through the doctrine of "democratic centralism," which binds all Communists to execute the decisions of the leaders of the world Communist movement.

The iron discipline existing throughout the world Communist movement is applicable on an international as well as a national scale and borders on military discipline; it requires unquestioned devotion to the program laid down by the Soviet Union; it requires, through the doctrine of "democratic centralism" that authority flow from the top of the international movement and the local Communist Party, respectively; it requires absolute unity of will and the constant elimination from the Party and the movement of all "deviationists," "factionalists," "opportunists," and others who for any reason do not fully accept and follow the Communist leadership and the Communist line, or who depart from basic Communist principles. These are contained in Marxism-Leninism and the "Conditions" and rules of the Communist International and are held to be necessary in order to establish the dictatorship of the proletariat and to protect and defend the Soviet Union. (See "Marxism-Leninism" and "World Communist Movement," *supra*.)

Respondent's organizational form and its declared policies and positions reflect compliance with the disciplinary requirements of the world Communist movement. It is established without dispute that respondent applies the principle of democratic centralism. We have heretofore made the finding that under Marxism-Leninism and the rules of the Communist International the principle includes the requirement that authority flow only from the top of the movement with limited right of discussion in the lower echelons of local tactics. Lautner related the democratic centralism practiced during his period in the Party to that defined in the "Classics," such as the *Programme of the Communist International* and *History of the Communist Party of the Soviet Union* (B). (See "Marxism-Leninism," *supra* fols. 2428-2429.) During Nowell's membership, authority in actual practice descended upon the membership from the top. During Gitlow's membership, respondent was a "Centralized Organization, ruled from the [fol. 2512] top down, and not from the bottom up." (Tr. 49.) As appears from Appendix A hereto, the experiences of these three witnesses spans the period from the inception

of respondent in the United States in 1919 until the year 1950.

Documentary material in the form of reliable expressions of policy and positions by respondent also shows the nature and a consistent following and recognition by respondent of the disciplinary requirements of the world Communist movement. Alexander Bittelman, then and now a top leader of respondent, in his pamphlet *The Communist Party in Action*, published in 1932, repeats Stalin on the role of the Party and the need for discipline:

"Stalin compares the Party to the general staff of an army. The Party is the general staff of the working class revolutionary army, leading the war against capitalism. As such the Party must be built as a centralized organization, each member belonging to a Party unit and carrying on daily active work among the masses under the direction of this unit, and fulfilling faithfully, consciously and loyally the Party policies and Party decisions." (Pet. Ex. 144, p. 23.)

Bittelman also stressed that international discipline is a "basic principle" of the world Communist movement:

"International discipline is of course a basic principle in the organization of the Communist International. Without it no working class revolutionary International is possible. It is noteworthy that every opportunist tendency that arises in our midst seeks to attack, first of all, the discipline of the Communist International, because in this way, the revolutionary Leninist policy of the Communist International would be weakened and opportunism would meet with less resistance. This can be seen very clearly in the attacks of the Trotskyite opposition and of the right wing renegades, prior to their expulsion from the Communist International, upon the discipline of our World Party, and their advocacy of the right to organize fractions and groups within the Communist International and its various sections. But our world Communist movement always presented an iron front against any such weakening of international discipline,

fighting for the Leninist principle that the Communist Party is a monolithic and homogenous body of revolutionary workers functioning as the vanguard of the working class." (*Ibid.*, pp. 34-35.)

[fol. 2513] Speaking of deviations from theory and policy as well as in the daily practical work, the article observes:

"... We observe however, among certain Party members, a tendency to be easy going, tolerant and conciliatory towards opportunist deviations. This is a dangerous attitude which is very harmful to the interests of the working class and to the growth of our Party. It is this attitude that Comrade Stalin attacked so sharply, branding it as 'rotten liberalism' and calling upon every communist to demonstrate in practice in his everyday revolutionary work true Bolshevik intolerance of and irreconcilability with all opportunist deviations from the Leninist line." (*Ibid.*, p. 48.)

The purpose of discipline in the Party was made clear in respondent's "Discussion Outline for Lenin Campaign," published in 1929; wherein it is stated that there must be discipline because "The Dictatorship of the Proletariat on a national and *international scale* cannot be prepared without a strictly centralized, disciplined Party." (Pet. Ex. 108, p. 2, emphasis added; see also *Why Every Worker Should Join the Communist Party*, Pet. Ex. 143.)<sup>75</sup>

Supporting the oral testimony that basic principles and the correct line cannot be questioned; respondent's *Manual on Organization*, issued in 1935, states that without discipline there can be no unity of action and carries the following instructions to the membership:

"It is clear, however, that basic principles and decision, such, as for example, the Program of the Com-

<sup>75</sup> When Nowell joined respondent, the application for membership required acceptance of the following:

"The undersigned declares adherence to the program and statutes of the Communist International and the Communist Party of the U.S.A., and agrees to submit to the discipline of the Party and to engage actively in its work." (Pet. Ex. 143.)

munist International, cannot be questioned in the Party. (Pet. Ex. 145, p. 26.)

“ . . . We do not question the correctness of the revolutionary theory of the class struggle laid down by Marx, Engels, Lenin and Stalin. . . . (Ibid., pp. 26-27.) [fol. 2514]

“Self-criticism is a natural part of the life of the Party. . . . Without self-criticism there can be no Communist Party. But this criticism must never depart from the line of the Party, from the principles of Marxism-Leninism. . . . destructive criticism . . . if tolerated . . . leads to factionalism.” (Ibid., pp. 32-33.)

Evidencing the continued application of discipline as required in the world Communist movement are the following statements of Henry Winston, a present top leader of respondent, made at the 14th Convention of the Party in 1948 and published in *Political Affairs*:

“ . . . We do not shrink from the hammer blows of reaction. Under them we will steel our Party in Communist discipline, loyalty, and unity, develop its Marxist-Leninist understanding, and temper our cadres and leadership. . . .” (Pet. Ex. 418, p. 856.)

More recently, *Political Affairs* for January 1951, covering the main resolutions of respondent's 15th National Convention, notes that self-criticism is a law of Party development and calls upon the whole membership to guard the monolithic character and unity of the Party “based on democratic centralism” and the highest discipline arising out of “conscious understanding of the Party's theory and political line”; that tendencies toward factionalism are “totally impermissible and must be sharply dealt with.” (Pet. Ex. 378, pp. 34-35.)

Specific instances of disciplinary action furnishes further evidence on the issue. Included are these events, which are discussed elsewhere herein: in 1929 respondent was purged of those individual leaders deemed to be factional



elements and opportunists, pursuant to Stalin's direction; Nowell, while a student in the Lenin School in Moscow, was disciplined by the Communist International for disagreeing with Comintern policy on the approach to the Negroes in America; Kornfeder was expelled from the Party in 1934 for failing to heed the instructions of a Soviet Union representative in the United States; Earl Browder and a number of his followers were expelled in the 1945 reorganization, which followed the Duclos criticisms, for deviating from the true line of Marxism-Leninism.

Other instances of record include the expulsion of a number of Party functionaries who refused to accept the sudden reversal of Party policy to conform with the Soviet Union's position in signing the Hitler-Stalin Pact in 1939. [fol. 2515] Among those expelled were one Wischnak, business manager of the *Daily Worker* and one Casey, its city editor. Max Bedacht, a former member of the Party Central Committee, was also expelled for political differences with the Party. During the period following the 1945 expulsion of Browder, Francis Franklin was expelled for disagreeing with Party policies. In 1950 Lautner, without advance warning, was subjected to a severe inquisition by officials of respondent and forced to sign a statement that he was a "spy and agent" in the ranks of the Communist Party and had received a fair hearing. He was not, and had not been, a "spy or agent." His efforts to get a review by respondent's National Review Commission were ignored. His only notice on his expulsion came from an article in the *Daily Worker* stating that he was expelled as a "traitor and enemy of the working class." (Pet. Ex. 361.) Indicative of the disciplinary program in the world Communist movement is the fact that the notice of Lautner's expulsion from the CPUSA was printed in the Communist form journal *For a Lasting Peace, for a People's Democracy*, and that the same issue contained a similar notice as to the expulsion of a member from the Communist Party of Italy, both under the heading "Rooting Out Traitors from the Ranks of the Communist Parties." (Pet. Ex. 362.)

It is also significant that, as previously noted, the Communist Parties in various countries joined in 1948 in approving a resolution of the Communist Information Bureau condemning Tito and the Yugoslavia Communist Party for having an anti-Soviet attitude and failing to accept criticism and measures set forth by the Communist Party of the Soviet Union. (*Supra*, fol. 2483, and Pet. Ex. 344.) The Cominform resolution was printed by respondent in *Political Affairs*, brought up at meetings of respondent's groups, and supported by respondent's officers Foster and Dennis. In 1949 the Cominform adopted another resolution concerning Tito and other leaders of the Yugoslav Party which brands them as "enemies of the working class" for becoming agents of Anglo-American "imperialism," conducting a "campaign of slander and provocation against the Soviet Union," and being disloyal to the principles of Marxism-Leninism. This resolution states the struggle against the Tito clique is the international duty of all Communist and Workers' Parties. (Pet. Ex. 258.) As shown in the section of this Report entitled "Nondeviation," respondent adopted this position and opposed Tito and this, too, resulted in members being lost to the Party. In 1951 one Warwick Thompkins was expelled by respondent for trying to organize Communist members to distribute leaflets containing "slandorous" remarks about the Soviet Union. (Tr. 11273.)

Stalin's speeches before the Comintern on the settlement of the 1929 factional dispute (subsequently published in respondent's official organ) refer to the conduct of respondent's members who questioned the decisions of the [fol. 2516] Executive Committee of the Communist International as "insubordination" and apply the term "enemies of the working class" to the factional group. (Pet. Ex. 109.) This expression covers so-called renegades, revisionists, reformers, opportunists, etc., which terms respondent frequently employs to describe present or past members not following the "correct revolutionary line."

Trotsky, who was expelled from the Communist Party of the Soviet Union, and Lovestone, who was expelled from respondent became descriptive examples of "enemies of

the working class" who must be purged.<sup>76</sup> Significantly, respondent's constitution as amended in 1942 provided:

"No Party member shall have personal or political relationship with confirmed Trotskyites, Lovestoneites, or other known enemies of the Party and of the working class." (Pet. Ex. 328, p. 13.)

And the present constitution provides:

"... Personal or political relations with enemies of the working class and nation are incompatible with membership in the Communist Party." (Pet. Ex. 374, p. 20.)

That "renegades" or "deviationists" etc., who must be expelled includes those who do not support the Soviet Union and its policies is indicated, in addition to the foregoing, from a 1934 publication of respondent covering its 8th Convention (*The Way Out*) and from a 1950 statement by respondent's officer John Gates made to respondent's 15th Convention, published in *Political Affairs*. The 1934 expression includes:

"*Renegades* are those who were formerly members of the Communist Party but were expelled from it for failure to follow the correct revolutionary line and who now fight against the revolutionary movement and against the Soviet Union. . . ." (Pet. Ex. 136, p. 17.)

[fol. 2517] The Gates statement in 1950 includes the point that:

"[The struggle] of the renegades from Marxism against the Communist Party inevitably and logically leads to struggle against the Soviet Union and to becoming outright agents of the imperialist bourgeoisie. . . ." (Pet. Ex. 376, p. 79.)

<sup>76</sup> Respondent's official declaration on the expulsion of Lovestone, Gitlow, and others who had refused to be bound by certain demands of the Comintern in 1929, calls their conduct "unprecedented warfare against the Party" and states that "Any association with the expelled, any support given them is incompatible with the duties of membership in the Party." (Pet. Ex. 117, p. 2.)

Testifying as a witness for respondent in this proceeding, Gates says the leaders of the Party do not recognize and do not consider themselves subject to the disciplinary power of the Soviet Government, the CPSU, the Comintern, the Cominform or any agencies of these organizations; that respondent's leaders are subject only to the discipline of the Party; and that leaders of respondent do not recognize any disciplinary power over them by the Soviet Union any more than the fact that he loves his wife indicates that she has disciplinary power over him. Flynn testified to the same effect as Gates.

Further indication of the recognition by a top leader of respondent of disciplinary power is that Foster himself admitted after becoming national chairman in 1945 that the only way he could have gotten before the membership an earlier letter of his in which he opposed respondent's formation as the Communist Political Association, which resulted in deemphasizing some aspects of Marxism-Leninism, was by facing expulsion and that since his letter would have caused disunity, any member who attempted to discuss it would have been denounced by Browder as a Trotskyite. After Foster became national chairman, those members who had supported Browder's policies engaged in "self-criticism" by declaring the Party to have been wrong in adhering to the deemphasis of Marxism-Leninism and in committing the other errors pointed out by Duclos, a spokesman for the world Communist movement.

When viewed in the light of the foregoing evidence on respondent's policies, positions, and activities, other circumstances are pertinent for consideration in resolving the issue of discipline. Respondent has in the past accepted the exercise of authority over it by foreign representatives. (See our findings under "Foreign Representatives.") Respondent has in the past maintained liaison with members of the Soviet secret police apparatus who were in the United States doing underground work and collecting intelligence data for the Soviet Union. Gitlow and later Budenz both knew and dealt with Jacob Golos as a resident agent of the Soviet secret police. Elizabeth Bentley, as a member of respondent, was designated by Golos as a [fol. 2518] trusted go-between in his contacts with Budenz.

Further, the record shows that members who took the three-year training course in Moscow, and were considered qualified, were sent as representatives or instructors into other countries. Kornfeder, after completing training in Moscow as a member of respondent, was sent in 1930 to South America to reorganize the badly functioning Party in Colombia and to organize an underground Party in Venezuela. Kornfeder identifies Charles Crumbein and Rudolph Baker as other United States functionaries who were sent as representatives outside of the United States. While in Moscow before going to South America, Kornfeder had daily meetings with Palmiro Togliatti,<sup>77</sup> who briefed him on South American policies. Earl Browder came back to the United States as an official of respondent in 1929 as part of the settlement of the factional dispute. He was first summoned to Moscow from a position as a Communist International representative in Shanghai, China, and after being instructed as to what was required of him, was assigned as general secretary of respondent. Other members of respondent are identified in the record as receiving foreign assignments on instructions of the Communist International. (See, e.g.; Tr. 1459-1461.)

Also with respect to other circumstances, in 1950 when Lautner was expelled from respondent, the Party's organizational structure included a New York State Review Commission and a National Review Commission which were maintained for the purpose of discipline, to safeguard adherence to Marxism-Leninism, and to find and treat with renegades and deviationists within the Party. Finally, we have taken into consideration, in the light of respondent's adherence to the requirements that Communists strictly "follow the line," our finding *infra* under the heading "Nondeviation" that respondent has not deviated from the positions and programs of the world Communist movement.

Summarizing, we find that the Soviet Union has established a requirement of iron discipline throughout the

<sup>77</sup> Presently leader of the Italian Communist Party and, at the time he instructed Kornfeder, head of the Latin American Secretariat of the Communist International.

world Communist movement which imposes upon the Communist Parties and their members in the various countries the duty of following with unquestioned devotion the line laid down by the Soviet Union; that respondent has recognized and accepted the requirement of iron discipline, and practices "democratic centralism" as enunciated by the Soviet Union; that respondent has not repudiated either and has acted in accordance with both; that officers and members of respondent have been expelled by respondent upon instructions from the Soviet Union; that respondent has subjected itself to Soviet discipline by expelling officers and members for failure to follow the line laid down by the Soviet Union, or for conduct of the type proscribed [fol. 2519] by the Soviet Union, such as so-called "revisionism" and "opportunism"; and that respondent maintains an organizational form prescribed by the world Communist movement to insure discipline and has followed policies and activities designed to carry out the disciplinary policies of the Soviet Union.

We find that respondent's principal leaders and a substantial number of its members are subject to and recognize the disciplinary power of the Soviet Union and its representatives. This evidences domination and control over respondent by the Soviet Union, and a purpose to advance the objectives of the world Communist movement.

#### e. COMMUNIST PRESS

As part of respondent's internal organizational policies and activities it is pertinent to consider its maintenance and use of official organs. We have previously set forth the finding that respondent's official organs are the *Daily Worker* and *Political Affairs*. In the Soviet Union an official organ of its Communist Party is the publication *Pravda*, which was founded in 1912 with the rise of the Communist revolutionary movement in Russia and which helped to organize the "mass actions of the proletariat . . . towards one definite aim—preparation for revolution." (Pet. Ex. 330, pp. 151, 153.) The publication *For a Lasting Peace, for a People's Democracy* has been the organ of the Communist Information Bureau.



The oral testimony and documentary material, including copies of the *Daily Worker* which fairly represent the entire period since respondent's early years, show that the nature and character of the *Daily Worker* have not changed throughout the period. Thus, it is pertinent to consider the requirements of the Communist International and of Marxism-Leninism regarding the Communist press, as well as other evidence, on respondent's official organs.

The Communist International required the member parties to "create a new type of periodical press . . . in which the Communists . . . learn to utilize the slightest liberty allowed by the laws" and without which press "the preparation for the dictatorship of the proletariat is impossible." (*Theses and Statutes*, Pet. Ex. 8, p. 20.) One of the "Conditions" of membership in the International provided:

"The general propaganda and agitation should bear a really Communist character. . . . The entire party press should be edited by reliable Communists who have proved their loyalty to the cause of the proletarian revolution. . . .

[fol. 2520]

. . . . .

"All . . . party publications and editions, are subject to the control of the presidium of the party, independently of whether the party is legal or illegal. The editors should in no way be given an opportunity to abuse their autonomy and carry on a policy not fully corresponding to the policy of the party." (Pet. Ex. 8, p. 27.)

Budenz was labor editor of the *Daily Worker* in 1936-1937, and managing editor in 1941-1945. His duties on the *Daily Worker* were "very definitely" supervised by the Party officials. (Tr. 11777.) There was a liaison overseer or representative of the Political Bureau who met as a rule every day with the editorial board of the *Daily Worker* and there was a direct internal telephone by which Budenz consulted frequently each day with the Political Bureau headquarters in connection with carrying out the Party line and the particular slant to be taken on indi-

viduals, committees, or movements. The complete tone of the paper, its political attitudes, and even the leading articles were under the full control of the Political Bureau. The entire staff of the *Daily Worker* had to be Communists and could only be assigned to the staff after clearance by the Party Control Commission.

The record contains instances in the earlier years of the *Daily Worker* of the receipt of financial aid from Moscow, and instances until about 1944 of information and services received by the *Daily Worker* free or at nominal cost from a Soviet Union news service. (See "Financial Aid," *infra*.) The record also contains various directives concerning the *Daily Worker* which were issued to respondent by the Communist International, and were followed. While Budenz was managing editor of the *Daily Worker* (1941-1945), staff meetings were held for political education—to keep the staff on their toes regarding Party theory and thinking—at which meetings the *History of the Communist Party of the Soviet Union* was used.<sup>78</sup> It is stated in the *History* that, "A powerful instrument used by the Bolshevik Party to strengthen its organizations and to spread its influence among the masses was the Bolshevik daily newspaper *Pravda* . . . founded, according to Lenin's instructions, on the initiative of Stalin, Olminsky and Poletayev." (Pet. Ex. 330, p. 149.) The *History* also states that *Pravda* "directed the working-class movement towards one definite aim—preparation for revolution" (*ibid.*, p. 153) and that a legally published newspaper "could not call openly for the overthrow of tsardom" and "had to resort to hints, which, however, the class-conscious workers [fol. 2521] understood very well." (*Ibid.*, p. 150.) Examples are given of "modest" sounding words which were understood by the workers as a "call." (*Ibid.*, p. 151.) Respondent's official concept of the *Daily Worker* in the 1930's which the record shows still persists, is that the paper is "One of the main and most important instruments of agitation and propaganda . . . for reaching and winning the masses." (Pet. Ex. 145, pp. 78-79.) This is pertinent for

<sup>78</sup> It has previously been found that the *History* is an important source for the rules and guides applied by respondent.

comparison with the afore-quoted concept of *Pravda* as "A powerful instrument used by the Bolshevik Party to . . . spread its influence among the masses." The record is clear that the *Daily Worker* and *Political Affairs* are used as means to inform respondent's membership on the "correct" views and policies, as well as to spread propaganda in behalf of the positions and policies of the Party, including those positions designed to win over the working class.

We note from the foregoing that the bulk of Budenz' tenure as managing editor of the *Daily Worker* came after respondent's announced disaffiliation from the Communist International and extended for almost two full years after the formal dissolution of the International. Yet, during these years the nature and character of the *Daily Worker* insofar as this record reveals, continued completely to conform with the requirements of the Communist International without change or repudiation. We also note a significant functional similarity between the *Daily Worker* and *Pravda*, the organ of the Communist Party of the Soviet Union.

Lautner knows of no instance during his Party membership when the *Daily Worker* took positions in opposition to the Soviet Union. The experience of Budenz was that praise of the Soviet Union was a "must" rule for the *Daily Worker* and *Political Affairs* and there was never any criticism of the Soviet Union; that when the policies of the United States differed from those of the Soviet Union, the *Daily Worker* always took the side of the Soviet Union. (Tr. 11852.) Our review of the record showed that these policies of the *Daily Worker* and *Political Affairs* have not changed and remain the same up to the time of the hearing.<sup>79</sup>

Gates, testifying for respondent, stated that the similarity between respondent's views and those of the Soviet Union is only the coincidence of the common application of Marxism-Leninism. He denied that any foreign publication contains directives to respondent, and respondent's other two witnesses testified to the same effect.

[fol. 2522] On the other hand, while Budenz was managing editor of the *Daily Worker*, "the Communists looked

<sup>79</sup> See "Nondeviation," *infra*.

in these articles from Moscow for the directives and the line that was to be pursued, the attitude that should be taken." (Tr. 11886.) It is not seriously disputed that the *Daily Worker* receives political news from abroad, particularly from Moscow, which includes translations from the Soviet press, and that a correspondent of the *Daily Worker* is stationed in Moscow.

Moreover, the record contains evidence which establishes that the Cominform organ, *For a Lasting Peace*, is distributed to functionaries of respondent and is available at meetings of respondent's committees and groups. This Cominform organ was regularly provided to the professional group in respondent of which Philbrick was a member. A specific instance of its use which he recalls was in connection with the resolution of the Cominform on Tito and the Yugoslav Communist Party. Lautner, Markward, and Janowitz also showed that the Cominform organ was studied in Party meetings they attended. The Cominform resolution on Tito was used by Lautner in the latter part of 1949 when he lectured to the members of one of respondent's sections pursuant to assignment from respondent's State Educational Department.

A number of officially issued statements by respondent quote and rely on articles from *Pravda* and *For a Lasting Peace* in a manner evidencing they were considered by respondent as authoritative. An example is given by the May 1950 issue of *Political Affairs* in an article entitled "For Communist Vigilance" which refers to the way in which the Polish and Bulgarian Parties dealt with opportunism in their Parties, and which quotes from both *Pravda* and *For a Lasting Peace* on the need for Bolshevik criticism and self-criticism. (Pet. Ex. 363.) Copies of *Pravda* which were put in evidence contain specific reference to the United States and the line thus given has been followed and advanced by respondent in this country.<sup>50</sup>

We find that respondent has continuously maintained a Communist press in the United States of the same nature and type provided for under the program and "Conditions" of the Communist International and the rules of Marxism-

<sup>50</sup> See "Anti-Imperialism," below.

Leninism. We also find that respondent's organs constitute media through which the correct Communist line, from authoritative foreign Communist organs, is transmitted.

[fol. 2523]

#### 4. ANTI-IMPERIALISM

Examining respondent's policies and activities in the light of the policies and activities of the world Communist movement, we consider first the "struggle against imperialism." In so doing, we examine respondent's policies to the extent they have relation to the issues herein. Whether such policies have objective merit is not an issue in this proceeding.

The findings heretofore made under the headings "Marxism-Leninism" and "World Communist Movement" show that the world Communist movement advances and follows the proposition that the capitalist system has evolved into "imperialism," which is described as a "world system of financial enslavement and colonial oppression of the vast majority of the population of the earth by a handful of 'advanced' countries" (Pet. Ex. 121, p. 35); and that the Soviet Union as the land of "socialism" and the leader of the world working class must be protected against the outside "imperialists." The countries specifically said to come within the designation of "imperialist" include Great Britain, France, Germany, Italy, Japan, and the United States.

Our previous findings also show that the primary objective of the world Communist movement is waging a struggle for a revolution to overthrow the "imperialist governments" for the purposes of protecting the Soviet Union and establishing a Communist dictatorship of the proletariat in place of the existing governments in the so-called "imperialist" countries. In this connection, the United States is given special importance as the mightiest of the "imperialist" countries and the arch enemy of the world Communist movement.

We consider first the general nature and aspects of the "struggle against imperialism" as waged by respondent, and the manifestations thereof such as advancing the concept of the alignment of forces throughout the world into the so-called camps of "peace and democracy" and "im-



perialism," the following of the doctrine of "just and unjust wars," and the use of the united front approach in the struggle.

It is not disputed that respondent takes the position that the United States is imperialistic under the definition of imperialism given in Marxism-Leninism, and is the leading imperialist nation in the world. Also, respondent's witness Aptheker conceded and the record shows that the provision in respondent's present constitution for the establishment of "socialism" means the establishment of the dictatorship of the proletariat as enunciated in Marxism-Leninism. In substance and effect, the testimony of respondent's witnesses is that respondent's struggle against imperialism and to achieve the dictatorship of the proletariat (socialism) is based on independently following a peaceful and constitutional road. We proceed to examine the evidence on respondent's policies and aims in the struggle against imperialism to determine their relationship to the policies of the Soviet Union and the world Communist movement, and the implications thereof.<sup>81</sup>

Respondent in 1929 set forth in its official organ, *The Communist*, Stalin's statement that:

"... the American Communist Party is one of those few Communist Parties in the world upon which history has laid tasks of a decisive character from the point of view of the world revolutionary movement. . . . when a revolutionary crisis develops in America, that will be the beginning of the end of world capitalism as a whole." (Pet. Ex. 109, pp. 19-20.)

While openly operating as the United States section of the Communist International, respondent proclaimed that it had entered "the struggle against American capitalism" and that for "final victory . . . against world capitalism the

<sup>81</sup> Determining the nature of respondent's struggle against imperialism involves other considerations. Thus, the findings under "Nondeviation" and the evidence of respondent's aid and support of international Communist movement accomplishments in other countries, such as China, as set forth under the preceding heading "World Communist Movement," are pertinent to consider in conjunction with this section.



working class of the world must be united under one leadership." (*Supra*, Pet. Ex. 19, p. 86.) Respondent was bound by the "Condition" of the Comintern to renounce "not only avowed social patriotism, but also the falsehood and the hypocrisy of social pacifism" and to "systematically demonstrate to the workers that without a revolutionary overthrow of capitalism" nothing can save mankind "from new Imperialist wars." (Pet. Ex. 8, pp. 28-29.) Respondent's *Manual on Organization*, first issued in 1935, states:

"... the Communist Party of the U.S.A. leads the working class in the fight for the revolutionary overthrow of capitalism, for the establishment of the dictatorship of the proletariat, . . . " (Pet. Ex. 145, p. 8.)

Party statements and pronouncements throughout its existence in its official organs and other publications show a consistent policy of respondent with respect to the "struggle [fol. 2525] against imperialism." In addition to the provision in the *Manual* that respondent fights for the "revolutionary overthrow of capitalism" (*supra*) this Party document states that respondent rallies the masses for "international solidarity with the struggle of the workers in other capitalist countries . . . [and] for the defense of the Soviet Union." (Pet. Ex. 145, p. 16.) Similar statement of respondent's policy appears in the 1930 pamphlet *Why Every Worker Should Join the Communist Party*, which expressed the Party struggle as being "for the overthrow of capitalism," to "defeat the imperialists," and to "defend the Soviet Union." (Pet. Ex. 143, pp. 13, 30.) Another pamphlet issued in the 1930's, *The Communist Party in Action*, declares respondent is "organizing the American proletariat to follow the example of the working class of Russia led by the Communist (Bolshevik) Party." (Pet. Ex. 144, p. 4.) In this connection, it is pertinent to note that the *History of the Communist Party of the Soviet Union* is one of the most important of the "Classics" of Marxism-Leninism setting forth the policy and program of the world Communist movement, and that the record establishes continuous use of this text by respondent. (See "Marxism-Leninism," *supra*.)

An expression of Party policy in the late 1950's appearing in *Political Affairs* is that in "country after country, the masses have made it known in various ways that never, never will they fight against the Soviet Union," (Pet. Ex. 477, p. 1) and:

"... The Soviet Union is the embodiment and leader of the forces of proletarian internationalism. \* \* \* the Communist Party of the Soviet Union ... is the leading Communist Party of the world. ... It is leading the fight for Socialism. \* \* \* Communists [recognize] the leading role of the Communist Party of the Soviet Union." (*Ibid.*, pp. 18 and 19.)

Speaking through *Political Affairs* for August 1951, respondent took the position that "The scales are weighed in favor of the people's peace forces, headed by the Soviet Union" and there is quoted with obvious approval the statement of Comrade Mao Tse-Tung, "the tested leader of the Communist Party of China" that the *History of the Communist Party of the Soviet Union* "is the highest synthesis, the highest generalization of the world Communist movement." (Pet. Ex. 484, pp. 11, 35, emphasis added.) In March 1952 respondent published in *Political Affairs* an article written by the general secretary, Communist Party of India, which favorably refers to the Soviet Union while being critical of "Anglo-American imperialists" and, speaking of successes of the Communists in the India general elections, states the efforts must be redoubled "to develop the movement which will sweep away the present Government." (Pet. Ex. 491, p. 44.)

[fol. 2526] *Political Affairs* for February 1951, a special issue devoted to respondent's 15th National Convention held December 28-31, 1950, is further revealing as to respondent's struggle against imperialism as shown from the following quotations:

"Our Constitution is the product of thirty-one years of struggle and experience of American Communists, and was given its present form by the struggle against Browder-revisionism, which restored our Party to the path of revolutionary class struggle, at the National

Convention of 1945. It applies the fundamental principles developed by the great Lenin, founder of the Party of a new type, which have proven to be universally applicable wherever the working class wages struggle to end exploitation and to usher in Socialist society. (Pet. Ex. 376, p. 74.)

• • • • •

"Our responsibility of proletarian internationalism demands an unrelenting struggle against the intensified poison of imperialist chauvinism and white chauvinism, that racist weapon of ruling-class ideology, which aims to prevent the unity of the working class with the Negro people at home, and with the colonial-liberation movements. (*Ibid.*, p. 189.)

• • • • •

"While our Party has conducted a constant struggle on the role of the Soviet Union as the Socialist bulwark for peace, colonial liberation and human progress, we must admit that we have not made this a central feature of our ideological work, to combat the anti-Soviet fabrications in a vigorous and consistent manner. This weakness in our work is also seen in the fact that in a very meager sense only have we made available the facts on the great economic and social achievements within the Soviet Union and the countries of People's Democracy." (*Ibid.*, p. 189.)

This exhibit (*Political Affairs*, February 1951, Pet. Ex. 376) contains the communication received by respondent on the occasion of its 15th Convention from Communist Parties throughout the world expressing their support of respondent in the fight against "American imperialism" [fol. 2527] and their solidarity and unity with respondent under "proletarian internationalism" headed by the Soviet Union. (See "World Communist Movement," *supra*.) Included among the communications was a message from the Central Committee of the Communist Party of the Soviet Union supporting respondent and stating, among other things, the desire that the "international solidarity of the

toilers in the struggle for peace, democracy and Socialism gather strength." <sup>82</sup> (*Ibid.*, p. 229.)

The foregoing expressions of position as revealed by respondent's official organs is illustrative of considerable documentary evidence on the subject, all of which establishes that respondent's policies and activities opposing "imperialism" conform with the positions of the Soviet Union and the world Communist movement as summarized at the beginning of this section of our Report and set forth in detail under the preceding sections, "Marxism-Leninism" and "World Communist Movement." <sup>83</sup> That respondent's policies and activities in the struggle against imperialism are those of the Soviet Union and the world Communist movement, as revealed by the exhibits, is corroborated and illuminated by the witnesses for petitioner who were at one time functionaries of respondent.

While Gitlow was a high officer of respondent, until 1929, his understanding of the aims and purposes of the Party were to defend the Soviet Union, to carry out the orders of the Communist International, and to work for undermining the foundations of the American Government in order to make it possible for respondent to overthrow our form of government and establish a dictatorship as in the Soviet Union. Kornfeder taught in a school at Party headquarters in 1932 that the main doctrine of Lenin called for the complete and total overthrow of the Government, the elimination of the present state structure and its replacement by a dictatorship led by respondent. Nowell's Party experiences were similar. He was taught at the Lenin School in Moscow in 1932 and then himself taught in respondent's schools in 1933 and 1934 that the Government of the United States was the executive committee of the capitalist class in the United States; that the pro-[fol. 2528] letarian revolution and the dictatorship of the

<sup>82</sup> We consider later under this heading the meaning of "peace" and "democracy" as used by respondent and in the world Communist movement.

<sup>83</sup> Respondent's policies and activities regarding the division of the world into two camps and "just and unjust wars," which we consider later under this heading, are part of the full picture on the so-called "struggle against imperialism."

proletariat were necessary and equally as inevitable in the United States as in other capitalist countries; that it was the duty of the Communists to work for the overthrow of the Government of the United States and the establishment of the dictatorship of the proletariat; and that it was the necessary duty of respondent, as a part of world communism, to work for the overthrow of the other "imperial nations." (Tr. 2436.)<sup>84</sup>

Meyer, while teaching in respondent's schools until the end of 1945 (several years subsequent to the announced disaffiliation from the Communist International), instructed the members of respondent that Marxism-Leninism is a guide to respondent in carrying out its *historical role or mission* to overthrow the capitalist system and political states founded on the capitalist system, to destroy the economic organization on which that society is founded and its political system, and to replace it with the dictatorship of the proletariat and establish the kind of socialism that will lead to communism. Lautner, whose Party membership extended to 1950, was taught as a Party functionary that the basic objective of the world Communist movement was to bring about the downfall of imperialism, the United States being the leading imperialist country, and that under Marxism-Leninism there is need of a world-wide organization that has "ties" to successfully cope with monopoly capitalism or imperialism and eventually bring about its downfall. (Tr. 9514.) Lautner identified the leadership of the world Communist movement as the rulers of the Soviet Union.

Before considering respondent's policies and activities which relate to the policy of the world Communist movement on the division of the world into the "camp of peace and democracy" and the "camp of imperialism," we determine the meaning of "peace" and "democracy" as used in the world Communist movement. Both words as so used connote the overthrow of "imperialism" and presup-

<sup>84</sup> Relevant to this issue petitioner's witness Scarletto testified concerning a meeting of a Party club where sabotage of United States efforts in the Korean War was discussed, however, this testimony was rendered questionable on cross-examination and is not credited.



pose the dictatorship of the proletariat. Dimitroff's *The United Front*, an important document in the world Communist movement, defines "democracy" as follows:

" . . . We Communists are unswerving upholders of Soviet democracy, the great example of which is the proletarian dictatorship in the Soviet Union. . . . This Soviet democracy presupposes the victory of the proletarian revolution, the conversion of private property in the means of production into public property, the adoption by the overwhelming majority of the people of the road to socialism. . . ." (Pet. Ex. 149, p. 109, emphasis added.)

[fol. 2529] The *History of the Communist Party of the Soviet Union* teaches the necessity of overthrowing imperialism in order to have "peace," stating:

"The Bolsheviks were not mere pacifists who sighed for peace and confined themselves to the propaganda of peace, as the majority of the Left Social-Democrats did. The Bolsheviks advocated an active revolutionary struggle for peace, to the point of overthrowing the rule of the bellicose imperialist bourgeoisie. The Bolsheviks linked up the cause of peace with the cause of the victory of the proletarian revolution, holding that the surest way of ending the war and securing a just peace, a peace without annexations and indemnities, was to overthrow the rule of the imperialist bourgeoisie." (Pet. Ex. 330, p. 167.)

The record shows that respondent makes the same use of these words as will appear later under this heading and as illustrated by a Party statement in the *Daily Worker* for November 7, 1950, that:

"Today the Soviet Union is indestructible. . . . The work of Lenin and Stalin is immortal. The Socialist state has become the leader of a new force in modern history—the great camp of peace. This new alliance of hundreds of millions of people in China and the People's Democracies, together with the vast millions in the colonial and capitalist countries, can pre-



vent war. This is the new achievement of the Soviet Union, the glorious vision that the people can make a reality." (Pet. Ex. 468.)

Regarding the alignment of the forces of the world into two camps, respondent's policy was shown to be the same as that of the Soviet Union and the world Communist movement.

To illustrate, the educational department of respondent's Michigan State Committee in April 1949 issued a "Discussion Outline" on "The Marxist Position Toward War," which says in part:

"... The post-war world was split by the U.S. and Britain into two camps—the camp of imperialism and fascism under the leadership of American imperialism and the camp of democracy, national freedom and peace, headed by the USSR." (Pet. Ex. 400, p. 4.)

[fol: 2530] In 1950 respondent's official organ set forth the position that "American imperialism is today the gendarme of the world, the crusher and violator of . . . peace and democracy. And, this is not something temporary, something that will change again tomorrow." Also, that the "more Wall Street imperialism loses its world positions, the more frantic and desperate it will become, and the sharper will become the struggle here at home—not the other way around." (Pet. Ex. 363, p. 119.)

The testimonial evidence shows that respondent's policy includes active efforts in behalf of the "camp of peace" and its leader, the Soviet Union. A Party group in Boston, Massachusetts, at a meeting in 1948 attended by Philbrick took the position that the United States led the "camp of Imperialism" and the Soviet Union led the "camp of the people's democracies," that "it was quite clear" to which camp Party members owed their basic loyalties, that no Party member could place himself in the "camp of the imperialist warmongers." (Tr. 6136.) When Lautner left respondent in early 1950, the Party line was that the United States headed imperialist forces of the world and the Soviet Union led the anti-imperialist forces, that everything should

be done to aid the Soviet Union and to disconcert the United States.

As found *supra*, the united front tactic is an important procedure set forth in Marxism-Leninism for attaining its objectives, and in 1935 the Communist International, with Respondent represented, mapped out the "tactical line" of forming united fronts with other organizations in order to achieve unity in the fight against "imperialism."

Respondent adopted a resolution "fully and wholeheartedly" endorsing those decisions of the Comintern and declaring the chief task of the Party to be reorienting the work of the Party in accord with the tactical line laid down by the Comintern as part of the Party's "revolutionary aims" and "revolutionary principles and program." (Pet. Ex. 185, pp. 1182-1185.) Respondent's resolution noted the "coming forward of the C.P.U.S.A. as a major party in the world organization of Communists" (*ibid.*, pp. 1182-1183) and stated in part:

"Every Party member must realize that in fighting for the realization of the united front of the working class we are fighting for the establishment of 'the decisive link in the preparation of the toilers for the forthcoming great battles of the second round of proletarian revolutions'. This is the link that will fuse the proletariat into a single mass political power [fol. 2531] and 'will ensure its victory in the struggle against fascism, against the power of capital, for the dictatorship of the proletariat and the power of the Soviets'. This gives us the line and methods to infuse the masses with the ideas of Communism, the principles of Marxism-Leninism, in the present period. This gives us the true weapon for the building and strengthening of the Communist Party, for the realization of the political unity of the American proletariat—one party—and for building the transition to the revolutionary struggle for a Soviet America." (*Ibid.*, p. 1184.)

Nowell, as a Party member, was instructed by his Party superiors to proceed to set up organizations in accordance with the new united front policy and the new type of re-

orientation directed by the Comintern. He carried out these instructions by forming factions in various organizations for the purpose of influencing the policies of the organizations and to guide them along the lines of the Party in setting up the united front movement.

When the tactical change in emphasis in the world Communist movement occurred after World War II and the new link for exerting influence and gaining adherents became the "struggle for peace,"<sup>85</sup> respondent's policy reflected the new emphasis. That respondent is actively applying the tactic of the united front in the "struggle for peace" is evidenced by statements appearing in a number of issues of both the *Daily Worker* and *Political Affairs*.<sup>86</sup> Lautner attributed respondent's emphasis on the "struggle for peace" to the fact that this was the emphasis of the world Communist movement. This is also evidenced from a study outline issued by respondent in 1949 which includes the study of the tactics of the Seventh Congress of the Communist International and points out that in the present period the strategic objective remains the same but the tactical line of the united front and people's coalition has developed still further. The outline lists Dimitroff's report to the Comintern as required reading and the *History of the CPSU* as supplemental reading. (Pet. Ex. 427, pp. 1-3 of Session 9.) A separate discussion outline, also issued by respondent in 1949, devotes considerable space to the "peace" line and lists works by Lenin and Stalin as well as the *History* as reading material.

[Vol. 2532] Demonstrating further that the "struggle for peace" is the current application of the "struggle against imperialism" and is linked to the Soviet Union, is respondent's statement in the March-1951 issue of *Political Affairs* that:

<sup>85</sup> See "World Communist Movement" *supra*, particularly fols. 2482-2484.

<sup>86</sup> See for example the *Daily Worker* for March 3, 1949, June 9, 1950, July 13, 1950, September 18, 1950, February 19, 1951, April 1, 1951, October 19, 1951, November 7, 1951, and June 9, 1952, (Pet. Exs. 331, 269, 270, 440, 451, 455, 467, 468, 495), and *Political Affairs* for November 1950, February 1951, April 1951, December 1951, and January 1952. (Pet. Exs. 477, 376, 480, 488, 489.)

"... We are firmly convinced that peace can be won, because of the strength of the world camp of peace, democracy and Socialism, led by the Soviet Union, and the growing weaknesses and differences in the world camp of war, led by United States capital. . . ." (Pet. Ex. 479, p. 20.)

Speaking of the "cause" to which its top official Foster "has dedicated and devoted his entire life," this same issue of *Political Affairs* defined it as the cause of "democracy," the cause "of world peace" and of "the final establishment of Socialism." (*Ibid.*)

Another program of the world Communist movement set forth in Marxism-Leninism and by the Communist International is the duty to aid and support "just" wars—those of liberation from foreign attack, or from "capitalist slavery," or to "liberate colonies and dependent countries from the yoke of imperialism" (Pet. Ex. 330, p. 168)—while opposing "unjust" wars—those engaged in by the "imperialist" countries and including any war against the Soviet Union (*supra*, fol. 2395). Explicit and inherent in this program are the protection and support of the Soviet Union and the overthrow of imperialism (*supra*, fols. 2395-2396). The program includes the activity of converting "imperialist" war into civil war and defeating one's own government in an "imperialist" war (*supra*, fol. 2396).

Respondent's application of the program with respect to "just" and "unjust" wars has been consistent throughout its existence as shown by the findings set forth below which are an illustrative part of considerable evidence.

The pamphlet on *Why Every Worker Should Join the Communist Party*, issued by respondent in the 1930's shows respondent's position as being that the first danger to the working class of all countries is imperialist war against the Soviet Union, that:

"... Workers of all countries must fight with all possible measures and weapons to defeat the imperialists and defend the Soviet Union. . . .

[fol. 2533] "... when war comes in spite of working-class opposition, the workers must prepare to turn such

war into a war to destroy imperialism itself, to overthrow the power of the capitalist class, and to establish a Workers' Government in the United States." (Pet. Ex. 143, pp. 30-31.)

This illustrates a quantity of evidence expressing respondent's policy at that time and is pertinent for comparison with the policy of the world Communist movement, *supra*, particularly the 1935 resolution of the Comintern which included the exhortation that in waging "the struggle against imperialist war before and after the outbreak of hostilities, the defense of the Soviet Union must be considered paramount." (Pet. Ex. 137, p. 48.)

In the years between 1945 and 1950, Cummings, Hidalgo, Blanc, Markward, and Baldwin were taught as members of respondent the concept of the division of the world into two camps and that wars of the imperialists were unjust wars whereas wars of the anti-imperialists were just wars; that in a war between imperialists and anti-imperialists, the members of respondent must aid the anti-imperialists; and that this would hold true in the case of a war between the Soviet Union and the United States.

Evans, a member of respondent from 1948 to 1952, was taught in respondent that in a war between the Soviet Union and the United States all members of respondent should help defeat the predatory aims of imperialism. Lantner was instructed as a functionary of respondent that in the case of a war between an imperialist country and a socialist country, Communists would support the socialist against the imperialist, specifically, they would support the Soviet Union against the United States.

In 1949 respondent's leaders Foster and Dennis wrote in the *Daily Worker* that respondent would oppose a "Wall Street" war as "unjust, aggressive, and imperialist." (Pet. Ex. 331.) The article was used in discussions at respondent's school in Boston while Philbrick was present. The instructor stated that the true patriot is the one who fights on the side of the working class and who fights against capitalism, he said Foster and Dennis were completely correct in boldly stating unequivocally that in the case of an imperialist war on the part of the United States, all Com-



munists, not only in this country but in the world, would oppose the war in every possible way and do everything they could to defeat the military operations of the capitalist Government of the United States.

Our findings under preceding subheadings show that after the successful October 1917 Revolution the objective of the Soviet Union was to consolidate, extend, and assure the continuation of its victory by using the Soviet Union [fol. 2534] "as a base for the overthrow of imperialism in all countries" (Pet. Ex. 121, p. 91); that the Communist International, under the control of the Soviet Union, was established on the initiative of Lenin as the "leader and organizer of the world revolutionary movement" (Pet. Ex. 125, p. 85); and, that after World War II the Communist Information Bureau was formed to coordinate "the actions of Communists in various countries" and align forces in the struggle against imperialism. (Pet. Ex. 367, p. 145.) Accordingly, and in view of the finding that respondent looks to the foreign Communist press for the current line, it is pertinent to consider the statements set forth in recent issues of the organ of the Communist Party of the Soviet Union relative to the struggle against imperialism.

*Pravda* in January 1949 stated that while imperialism exists there also exists the danger of new aggression but the Soviet Union "with its growing power and its international authority" constitutes an "insurmountable barrier" to the establishment of world domination by one power or another. (Pet. Ex. 251, p. 19.) *Pravda* in March 1950 declared that the "victory of the national liberation movement in China" was the most powerful blow at world imperialism since the October Revolution of the Soviet Communists and that now the Soviet Union is "the center of the powerful international democratic camp," with millions of active friends in the capitalist countries, which is opposed by "the camp of the imperialist powers headed by the ruling circles of the United States of America." (Pet. Ex. 217, pp. 4, 5, 6.)

The November 1949 report of Malenkov to a meeting of the Moscow Soviet (*supra*), which was published in the organ of the Cominform, contains a substantial portion under the heading "The Soviet Union Stands for Peace and



Defends the Cause of Peace." He points out that there is not a single country in which the movement uniting the supporters of peace does not possess a "base" and that the successes of "the camp of peace" drives the "enemies of peace," "by means of violence and new wars," to attempt the creation of an American world empire designed to turn the whole world into a "colony of the American imperialists, of reducing sovereign peoples to a state of slavery." (Pet. Ex. 231, pp. 1, 2.) Additional evidence of the Soviet Union position, as well as evidence that respondent accepts and supports it, is given by a condensed translation from the Soviet journal *Voprosi Filosofie*, which respondent published in *Political Affairs*. It approves an early Soviet statement to the effect that "the peoples" are taking the fate of their states in their own hands and establishing "democratic regimes" and "carrying on an active struggle against the forces of reaction, against the incendiaries of a new war." (Pet. Ex. 488, p. 20.)

[fol. 2535] Further in this connection, we have previously set forth the fact that in 1949 Communist Party leaders and organizations, including those in France, Italy, Australia, Belgium, Argentina, and Canada, affirmed that the Communist Parties in those countries would not bear arms in a war against the Soviet Union. The Cominform organ *For a Lasting Peace* declared in 1950 that:

"... At the present time the great and noble aim is to defend peace from the threat of the new war being prepared by the Anglo-American Imperialists. . . . Awareness of the need to wage the struggle for peace ever more resolutely, vigorously and selflessly is becoming a determining feature of the peace movement.

"The whole world knows of the warmth with which the great Chinese people welcomed the news of the signing of the Treaty of Alliance between the U.S.S.R. and the Chinese People's Republic, a treaty which strengthens the camp of peace the world over.

"In the present situation a great historic responsibility rests with the Communist and Workers' Parties. Marching in the vanguard . . . and regarding the struggle for peace as their main task, the Communist and Workers' parties must double and treble their efforts to rally the broad masses for vigorous and concrete action . . ." (Pet. Ex. 405.)

Finally in connection with the "struggle against imperialism" we have taken into consideration our findings under the later heading "Allegiance," including that a number of respondent's leaders, many of whom have been in leadership positions since the period of the Communist International, were recently convicted of violating the Smith Act.

We find that respondent continuously throughout its existence has advanced the policy of the Soviet Union and the world Communist movement for the overthrow of the governments of countries designated as "imperialist," particularly the United States, in order to establish in place of such governments a Communist dictatorship of the proletariat, and to defend the Soviet Union.

[fol. 2536] We now examine further evidence on respondent's major programs.

## 5. MAJOR PROGRAMS

### a. GENERAL

The scheme of the world Communist movement as set forth in Marxism-Leninism, by the Communist International, by the Communist Information Bureau, and in separate pronouncements of the Soviet Union, contains rules and programs of activity deemed necessary to achieve the ultimate objectives of the movement; the more important areas of activity are trade union, youth, and colonials or national minority groups. The theory of the world Communist movement is that trade unions and youth are the "belts" and "levers" without whose aid the Communist dictatorship of the proletariat cannot be realized, while the Communist Party is the directing force; that trade unions are "a school of Communism," youth are "young reserves," and national minorities have "latent revolu-

tionary capacities." The aims of the world Communist movement are for "winning over" and "utilizing" trade unions, for "organizing the Marxist-Leninist training of youth," and for "utilizing" the latent revolutionary capacities of the minority groups, all in order to "overthrow imperialism."<sup>87</sup>

The evidence discloses, and as we read the record it is not disputed, that respondent likewise attaches extreme importance to work among labor unions, the youth, and minority groups, particularly the Negroes. The objectives of the policies advanced by respondent and the activities pursued in these important areas are material.

The article "Milestones of Comintern Leadership" (Pet. Ex. 126), written in 1934 by Bittelman, then and now one of respondent's top officials, evidences that respondent's programs in trade union work and among the American Negroes were formulated under direction of the Communist International. Bittelman wrote in pertinent part as to respondent's trade union work:

[fol. 2537] "The next milestone in the Comintern leadership for the American party we find on the question of trade union work. . . . The Comintern brought the American militants and lefts closer to the world labor movement and to the basic problems of the American labor movement. The trade union question was one of them. . . . Even the best and most experienced among the left and militant leaders of the American workers, . . . such as the late Charles E. Ruthenberg, as well as the present leader of our Party, William Z. Foster, were able to rid themselves and

<sup>87</sup> These quotations are from excerpts heretofore set forth including the "Classics" of Marxism-Leninism and the *Programme and Theses and Statutes* of the Communist International. The repetition of these policies and programs by the Cominform is shown from the Suslov report printed in the December 2, 1949, issue of *For a Lasting Peace* (Pet. Ex. 249, p. 3, *supra*), which emphasizes the necessity of drawing trade unions into the "camp of the fighters for peace, against the warmongers," points out the help that can be furnished by youth, and says the duty of the Communist and working class parties in the capitalist countries is to merge the struggle for national independence of minorities with the struggle for peace.

our movement of the old banast of opportunism only by coming closer to Leninism and into the Comintern. . . ." (Pet. Ex. 126, pp. 239-240.)

It was Comintern advice and guidance that helped the American Communists to turn full face to the building of a left-wing in the reformist unions beginning with 1920; it was the advice of the Comintern that helped formulate a correct solution to one of the basic problems of the American proletariat—the organization of the unorganized into trade unions; it was the advice of the Comintern on independent leadership of the economic struggles by the revolutionary elements that helped formulate strike policies and tactics; . . . (*Ibid.*, p. 240.)

"Comintern influence on the development of revolutionary trade union policies in the United States has especial significance. . . . It is significant, therefore, that the first question which Comrade Stalin put to the American trade union delegation was: 'How do you account for the small percentage of American workers organized in trade unions?' . . . the intent of Stalin's question is clear: Why don't you organize the workers in trade unions? Why don't you strengthen them against the capitalists? And it was in this direction that the Comintern threw the full weight of its influence and advice in the American labor movement. . . . Tactics and methods of work might vary, depending upon the state of the class struggle. . . . But the strategic aim always remained the same, and for this aim the Communist Party fights bravely and persistently and with increasing effectiveness. . . . So, we ask again: can any American worker, who is alive to the needs of his class and is willing to fight for them, find anything to object to in this 'interference' of the Communist International in American affairs? And will he object to the Communist Party of the U.S. accepting and taking deep satisfaction in such 'interference'? No, he will not. . . ." (*Ibid.*, pp. 240-241, emphasis added.)

[fol. 2538] Concerning the matter of national liberation, the Bittelman article says:

"... Once more came the 'outside' influence of the Comintern, and what did it say? It said that the struggle against discrimination and for Negro rights is a revolutionary struggle for the national liberation of the Negroes, that we must fight for complete Negro equality, and that in the Black Belt the full realization of this demand requires the fight for the national self-determination of the Negroes, including the right to separation from the United States and the organization of an independent state. Furthermore, it was the interpretation of Leninism and its application to the United States as made by the Comintern that showed the American Communists that the agrarian revolution in the Black Belt, . . . is the basis of the national-liberation movement *and that this movement is one of the allies of the American proletariat in the struggle for the dictatorship of the proletariat.* . . . Will the Negro workers, farmers, and city poor consider the Comintern advice on the Negro question as 'outside dictation'? No: They will, as they actually do, receive this advice with outstretched arms and will continue in ever-larger masses to rally around the Communist Party as the leader of the liberation fight. . . ." (*Ibid.*, p. 244, emphasis added.)

A review of respondent's early documents and the testimony of witnesses who were officials of respondent during its formative years, establish that respondent gave to trade unions, youth, and minorities as prominent a place in its structure as did the founders of the dictatorship of the proletariat in the Soviet Union. Respondent's articles, publications, and other documents, together with the testimony of witnesses, show that throughout its existence and up to the time of this proceeding, respondent has continued to give extreme importance to trade union work, the mass organization and training of youth, and the struggle for national liberation of the Negroes. It is not necessary to review herein the considerable quantity of evidence that

shows the extent of respondent's policies and activities in furtherance of the world Communist policy on trade union, youth, and national liberation movements, nor to review the large quantity of evidence from which we find that these policies and activities of respondent represent to a substantial degree the continued adherence by respondent to un-rebutted directives given by the Soviet Union. We limit this Report to some of the more significant indications. For clarity, we treat the subjects separately. The evidence hereinafter set forth is in addition to the fact that respondent's policies and activities on trade unions, youth, and the struggle for national liberation are based upon Marxism-Leninism.

[fol. 2539]

#### b. TRADE UNION WORK

One of the "Conditions" for membership in the Communist International, to which respondent became bound, was:

"Every party desirous of belonging to the Communist International should be bound to carry on systematic and persistent Communist work in the labor unions, co-operatives and other labor organizations of the masses. It is necessary to form Communist groups within the organizations, which by persistent and lasting work should win over labor unions to Communism. . . . These Communist groups should be completely subordinated to the party in general." (Pet. Ex. 8, p. 29.)

In 1927 Benjamin Gitlow, at the time a member of the Politburo of respondent and its Central Committee, was sent by respondent to the Soviet Union at the special request of the Communist International to attend the Plenary sessions of the Executive Committee of the Communist International. While there, Gitlow, and other leaders of respondent met with Joseph Stalin. Stalin directed the Communist Party to make a serious effort to get a foothold in the trade union movement of the United States in order to attract to the Communist Party a much larger membership and to await a sharpening of the economic and social situation in the United States for future revolutionary ac-



tion. We note that Stalin's directive is in line with the policies of Marxism-Leninism and of the Comintern, set forth *supra*.

The official minutes of the proceedings of respondent's governing committees for a number of meetings during the period from late 1925 to late 1928 show action by respondent concerning trade union work pursuant to specific instructions and directives from the Communist International. (Examples are Pet. Exs. 53, 63, 65, 77, 80, 87, and 91.)

The record shows that respondent's tactics in its trade union work have been changed at least three times pursuant to directives of the Communist International and to effectuate the policies of the world Communist movement. Originally, the policy was to operate in existing unions. This was changed in 1928 to a policy of concentrating on forming new unions pursuant to a Comintern policy change applicable on a world-wide scale. In 1934 the policy reverted to one of operating in existing unions pursuant to the Comintern united front policy. The evidence establishes this policy is still in effect.

[fol. 2540] The evidence on respondent's changing tactics in trade union work includes the unrebutted testimony of Gitlow on important Soviet-directed policies of respondent while he was an official thereof. This testimony included:

"For example, the trade union policy of the United States. The trade union policy of the United States has shifted from independent trade-unionism, outside of the American Federation of Labor, to working within the American Federation of Labor. When this policy was changed in Moscow, it shifted from that of the organization of Communist, independent unions, in this country. The political factors that were changed: the Communist support of the formation of the labor party in the United States, first approved by the Communist Internationale, and the Communist Internationale changed that policy, and that policy was changed and the Communist Party went into the organization of an independent ticket.

"That later was changed again to a decision by the Communist Internationale directing the Communist

Party of the United States to work for the formation of a farmer-labor party in this country." (Tr. 120-121.)

The changes in trade union tactics and the purpose of trade union work is also shown by the experiences in respondent of the witness Nowell. In 1929 he received instructions from respondent's Central Committee to help organize industrial workers in the basic industries in a national parent organization known as the Trade Union Unity League affiliated with the Red International Labor Unions in Moscow. The purpose of respondent was to use these unions as schools of communism and for aiding and facilitating the proletarian revolution. In 1935 Nowell, along with a group who had been or were employed in the automobile industry, was instructed by respondent to work for Communist control of their local unions and to gain hegemony in the CIO (Committee of Industrial Organization, which later became the Congress of Industrial Organizations).

The Bittelman article on Comintern leadership (*supra*) further evidences that the directives of the Communist International constitute an important source of respondent's united front program in trade union work, stating:

[fol. 2541] "... In short, at every stage in the development on the revolutionary trade union movement in the United States (T.U.E.L., class struggle unions of the T.U.U.L., the application of the united front on the trade union field, the fight for trade union unity, etc.), it was with the help of the Comintern that the American revolutionary workers were able to find the correct way, to correct their errors and, through manifold changes in tactics, to press on to the goal of building a revolutionary trade union movement in the United States." (Pet. Ex. 126, p. 240.)

Evidencing the current following of the united front tactic in trade unions, respondent resolved at its 1950 National Convention that:

"... We must face the fact that the overwhelming bulk of the organized workers in the country are in the

A.F. of L., C.I.O. and independent Right-led unions. It is this which must determine the main direction of all of the Party's work, and especially its trade-union and industrial concentration policy." (Pet. Ex. 378, p. 13.)

And in *Political Affairs* for February 1951, respondent stated in an article entitled "Broadening the United Front for Peace in the Trade Unions":<sup>55</sup>

"Above all, and this is most decisive, we must organize and systematically guide and direct our industrial and shop clubs toward mastering the methods of united-front activity for peace in the shops and unions. We talk a great deal about style of work. These are the places, first of all, where the expression, 'style of work,' must assume concrete meaning. (Pet. Ex. 376, p. 170.)

"Style of work, that's the thing. We must go down to each shop and industrial club, to help organize the club for united-front activities for peace on the basis of the specific problems in each shop or union. . . ." (*Ibid.*, p. 171.)

The experiences of other witnesses, while holding functional positions in respondent, as well as additional documentary material give further evidence as to the source and purposes of respondent's trade union work. In 1932 Kornfeuer taught in respondent's school at the national headquarters in New York. In a course on Leninism he covered the main doctrine calling for the complete and total overthrow of all existing social institutions, the Government, and the complete elimination of the present state structure and its substitution by a dictatorship led by the Communist Party. With respect to labor union tactics, he taught how to secretly form groups inside of labor unions

<sup>55</sup> The united front for peace is the present emphasis of the struggle against imperialism, i.e., for the overthrow of imperialism. See the preceding section of this Report, "Anti-Imperialism."

for the purpose of getting control of them, and how to prepare for and carry on a strike.

Under the programs of the world Communist movement, the incitement to strike is a tactic of labor union policy and activity. In the late 1920's a special committee was created by respondent in an attempt to gain control of the United Mine Workers by utilizing anthracite strikes to respondent's advantage. In 1934 the Comintern and the Red International of Labor Unions, at joint meetings in Moscow, instructed respondent to press the then current situation among the longshoremen and dock workers in San Francisco to the point of a general strike. These instructions were communicated to respondent by coded message and were carried out. Manuilsky, then secretary general of the Communist International,<sup>89</sup> expressed himself as anxious to have the strike since a cardinal principle of Leninism was that a general strike is a rehearsal for revolution or for a seizure of power by the Communist Party. A strike meeting was called at the Fisher Body Plant in Cleveland in the 1930's at the direction of the Communist International representative, Gerhardt Eisler. In 1940, respondent instigated a strike at Allis-Chalmers in order to slow down the production of war materials for Great Britain, then at war with the Soviet Union's then ally, Germany.

We note in connection with foreign control over respondent's trade union activities, as previously noted, that Kornfeder was warned by foreign representative Gerhardt Eisler not to speak out at respondent's convention in opposition to a change in trade union policy and was subsequently expelled for not repudiating his opposition to the changed policy. Also, Honig in the early 1930's was given instructions by a representative of the Communist International concerning his Party assignment as editor of a publication called *Labor Unity*.

Nowell, while a student of respondent at the Lenin School in Moscow in 1931, studied Soviet trade union activities and worked for the Comintern in formulating policies for respondent to carry out in its trade union work. Honig, while

<sup>89</sup> Manuilsky in 1945 was Soviet representative to the initial United Nations Conference on international organization held in San Francisco.

[fol. 2543] in the Soviet Union on respondent's business, sent back reports on decisions made by the Comintern or its affiliated Red International of Labor Unions on trade union tactics. He saw reports sent to Moscow by respondent that it was carrying out these directives.

In May 1940 respondent published in its magazine *The Communist* (Pet. Ex. 436) an article by Dennis, then and now a high official of respondent, entitled "The Bolshevization of the Communist Party of the United States in the Struggle Against the Imperialist War," which states it is particularly urgent, in accordance with certain conditions outlined by Stalin in *Pravda* in 1925, to conduct more consistent and effective activity among the AF of L workers.

An article by Henry Winston, then respondent's national organization secretary and now on the National Committee, appearing in *Political Affairs* for September 1948 (Pet. Ex. 418) entitled "For a Fighting Party Rooted Among the Industrial Workers!" concerns the necessity for mobilizing the workers in the factories as a main base for a successful fight against war and fascism. Cummings, a member of respondent from 1942 to 1949 was taught that an important objective of respondent was to infiltrate trade unions, Negro organizations, and other organizations in order to gain control of them and eventually change the system of the American Government. Evans attended the 1951 west coast regional convention of respondent at which considerable attention was devoted to the principle of industrial concentration, the necessity of infiltrating the trade unions. Philbrick showed that at a Party conference in 1946, the lead-off speaker stated that the basic industries were the major weapons of the "imperialists," with the Soviet Union the prime target, and that the Party should concentrate its efforts against these basic industries. Lautner and Baldwin gave evidence showing trade union activities of respondent designed to build the Party numerically and to develop cadres in the industries.

The February 1951 issue of *Political Affairs* (Pet. Ex. 376) "devoted to reports, speeches, and greetings of the 16th National Convention of the Communist Party, USA, held in New York City on December 28-31, 1950," (*ibid.*, p. 1) contains an article by John Williamson, a member of

respondent's National Committee and its labor secretary, entitled "The Main Direction of the Party's Trade-Union Work" (*ibid.*, pp. 54-73) which direction, the author says, must be "among the members of the reformist-led unions" (primarily the AFL and CIO). (*Ibid.*, p. 66.) The article refers to the role of the Party through its 31 years existence and concludes that "in general the trade-union policies adopted by our Party were correct." (*Ibid.*, p. 72.) According to Williamson:

[fol. 2544] "... The present situation demands from all Party trade unionists, especially in positions of leadership, closer ties with the Party, better understanding of policies, and a more vigorous fight for Party policies among the masses. (Pet. Ex. 376, pp. 72-73.)

"... We know ... our Party, headed by its helmsmen Foster and Dennis, will lead the working class safely to the port of Socialism." (*Ibid.*, p. 73.)

Janowitz was a member of respondent both during the period it was called the Communist Political Association and after it reverted to the name Communist Party. He held minor official positions and was active in respondent's trade union work in Ohio. He and one Fred Haug, at a meeting of Communist labor members in 1950, were assigned the duty of getting new members for the Party. Also in 1950, at a meeting of a Communist Party group of the plant where Janowitz was employed, a State official of respondent handed out copies of *New Times*, published by the newspaper *Trud* in Moscow, and of *For a Lasting Peace, for a People's Democracy*, official organ of the Cominform. The official told the labor members to study the documents and pass them on. On the basis of his experience in the Party, Janowitz learned that the Communists are to take advantage of every opportunity that arises, e.g., depression or strikes, to lead the masses, and are to be the leaders in any movement that unites the masses for the purpose of "getting rid of the capitalist system in America," and substituting communism. (Tr. 10788.)



Summarized, we find that while an open member of the Soviet-controlled Communist International respondent fully complied with and followed the policy and directives of the International in developing "revolutionary trade union policies in the United States"; that respondent currently follows and applies the same policy and program toward work in the trade unions; that respondent's work in the trade unions adheres to the program of Marxism-Leninism for utilizing trade unions as "belts" and "levers" in seeking to achieve the dictatorship of the proletariat and to effectuate the policies of the Soviet Union.

[fol. 2545]

### c. YOUTH WORK

The evidence on respondent's programs and activities with respect to the youth reveals a similarity to respondent's trade union programs and activities in that the clear preponderance of the evidence establishes that while an open member of the Communist International respondent's policies on youth work were formulated and carried out and its activities among the youth performed pursuant to directives of the Comintern.<sup>90</sup> The evidence is also clear that respondent's youth programs and activities follow Marxism-Leninism. No useful purpose would be served in detailing the evidence establishing these facts. We limit this Report to illustrative evidence on significant points.

In its 1926 directives to respondent the Communist International stated that greater attention must be given to the building of a mass Young Communist League, that "the young will serve as a reservoir of trained Party members." (Pet. Ex. 40, p. 4.) The Comintern approved respondent's program for a unit of the League "wherever a Party unit exists." (*Ibid.*) A copy of the resolution of the Comintern containing the directives to respondent was distributed by respondent to all its District, City, Section

<sup>90</sup> Included in the evidence covering the period of the Comintern are the minutes of various top governing bodies of respondent in 1925-1928 (for example, Pet. Exs. 58, 71, 72, 73), the Party pamphlet issued in 1932 entitled *The Communist Party in Action* (Pet. Ex. 144), respondent's *Manual on Organization* (Pet. Ex. 145), and the Party pamphlet *The Way Out* (Pet. Ex. 136) covering resolutions adopted by respondent in 1934.

Committees, and Language Bureaus (but to be kept within the Party ranks and not published).

In respondent's 1935 resolution endorsing "fully and wholeheartedly the decisions of the Seventh World Congress of the Communist International," the Party noted the decision to "build the widest anti-fascist youth front throughout the world" and affirmed as Party policy the creation of "a genuine non-Party youth organization . . . which will educate all its members in the spirit of Marxism-Leninism." <sup>91</sup> (Pet. Ex. 185, pp. 1182, 1185.)

Respondent's pamphlet *The Way Out*, issued in 1934, defines the Young Communist League as the mass political organization of young workers which leads them in the struggles for their demands and acts as a training school [fol. 2546] for communism; it is organizationally independent of the Party but acknowledges the Party's political leadership and is affiliated with the Young Communist International.

Philbrick joined the Young Communist League in 1942. He attended meetings regularly and showed that a part of each meeting was devoted to studying Marxism-Leninism or some current Communist pamphlet or booklet. He was later recruited into the Communist Party by one Alice Gordon, who had been an official of the Young Communist League and at the time she recruited him was a paid functionary of the Party in charge of the Party's youth work in the State of Connecticut.

The Young Communist League in the United States was dissolved in 1943 (when the Communist International ceased to exist) and in its place the American Youth for Democracy was formed as what is known by Communists as a coalition group, being composed of both members and non-members of the Communist Party. It was technically a non-Communist organization, formed as a win-the-war organization designed to recruit and influence as many young people as possible for the respondent Party. Philbrick, a member of respondent, was State treasurer of the American Youth for Democracy and one of its leaders while continuing his duties in respondent. The meetings of the

<sup>91</sup> See fol. 2495, *supra*; where respondent states it is presently effectuating decisions of the Seventh Congress of the International.

American Youth for Democracy which he regularly attended were conducted along the same lines as those held by the Young Communist League, which included training in organization, discussion of current activities on the part of young Communists in the group, and educational sessions on Marxism-Leninism.

Later there was formed an organization known as the "Labor Youth League" as evidenced from *Political Affairs* for February 1951 in which, stating that the 15th National Convention of respondent, held in December 1950, "reflects real progress in our youth work and better understanding of our Party policy in this field," (Pet. Ex. 376, p. 175) reference is made to the Labor Youth League as follows:

"The 1948 Convention of our Party gave important emphasis to the need of establishing a non-Party working-class youth organization dedicated to the training of the youth in the spirit of Socialism. . . .

[fol. 2547] "The recent founding Convention of the Labor Youth League . . . has made a deep impression on our whole Party. In this short time the League has proven itself to be a worthy heir of all the best traditions of the Young Communist League, its 25-year record of struggle and its training of many of the outstanding leaders of our Party today. . . . (Pet. Ex. 376, p. 175.)

"Experience has borne out fully the correctness of establishing L.Y.L. as an independent non-Party mass youth organization. The best answer to those comrades who two years ago thought Party youth clubs filled the need for youth work are the thousands of non-Party members of L.Y.L. who are today participating in its activities and learning in a Marxist spirit." (*Ibid.*, p. 180.)

We note that this exhibit reflects the establishment of the "Labor Youth League" as "a worthy heir of all the best traditions of the Young Communist League." The exhibit calls the new youth league a "gold mine" for training Party

forces and declares that "the fight to win the youth" requires "enlarging the core of Party members in the L.Y.L." and uniting the youth with the spirit of internationalism and the world movement for peace. (*Ibid.*, pp. 179, 180, 182.)

An article in *Political Affairs* for November 1950, entitled "A Generation of Soviet Youth," (Pet. Ex. 477, pp. 85-95) holds up Lenin and Stalin as models for youth and, after reviewing the role which youth played in bringing about the establishment of the dictatorship of the proletariat in Russia, pictures the lot of the Soviet youth under such dictatorship as one of security, free from unemployment and with the right to leisure, whereas in sharp contrast the American youth must face the constant fear of unemployment under the scourge of American capitalism. In conclusion, the article declares that solidarity with the Soviet Union and appreciation of its leading role in the struggle for peace, democracy and socialism; become the touchstones of true internationalism among young people of all countries; and that it is particularly important in the United States—the center of world imperialism—to bring this wonderful understanding to the young people who are studying Marxism-Leninism and to the Party which helps to guide their youth.

[fol. 2548] The foregoing activities and expressions of respondent's policy regarding youth work are pertinent for comparison with the principles of the world Communist movement that a matter of decisive importance in the fight against "imperialist wars" is the work among the youth who, with trade unions, represent the "belts" and "levers" without whose aid the dictatorship of the proletariat cannot be realized. Also in this connection, the resolutions of the Cominform issued in November 1949 included work in mass youth organizations as "Of extreme importance" in the "struggle against Anglo-American imperialism and reaction at home." (Pet. Ex. 258.)

The fact that respondent has republished in the United States and uses as textbooks and guides to action many of the documents and publications of the Soviet Union is pertinent to consider with respect to respondent's policy and programs regarding youth, as well as respondent's other programs. A significant action in this connection is

the fact that respondent and other Communist Parties adopted the resolution making the reading and study of the *History of the Communist Party of the Soviet Union* "a must" among Party officials and members (*supra*). The *History* gives to young Communists a prominent place and proclaims the necessity of organizing the Marxist-Leninist training of youth.

The experiences of Meyer illustrated an integration of the youth work in the world Communist movement. Before coming to the United States, Meyer was a member of the Communist Party in Great Britain where he was active in work for the Young Communist League and was associated with the secretariat of the Central Committee of the British Young Communist League. In 1934 he went to Paris in connection with setting up a world student and youth congress with counterparts in America and Great Britain. This work, while Meyer was in Paris, was under the direction of Walter Ulbricht, who at the time Meyer testified herein was Vice Prime Minister of Eastern Germany. Upon arrival in the United States in 1934, Meyer was assigned by Gil Green to youth work in the United States and during the summer of 1934 attended the convention of the Young Communist League of Canada together with Gil Green and a Max Weiss from the Young Communist League in the United States.

Respondent's witness Gates joined the Young Communist League in the depression year of 1931. His activities in the League led to his attaining a position of leadership in respondent, which he joined in 1933. He participated in League agitation for the Unemployment Insurance Act and on the Scottsboro affair. He says his duties and activities as head of the League in New York State were almost identical [fol. 2549] with the general activities of Communists during the period and consisted of activities by the young people of New York State on behalf of the economic welfare, democratic rights, and peace.

As set forth *supra*, Marxism-Leninism sanctions activities calculated to achieve reforms as one of the means to cover "the preparation of the masses for the overthrow of the bourgeoisie." (Pet. Ex. 121, pp. 103-104.) This was recognized in the official Party writing of respondent's

leader Bittelman in his 1934 pamphlet *The Communist Party in Action*, stating the importance of daily struggles concerning "small" grievances must not be underestimated and that only by conducting every day struggles can the Party achieve a united front and lead the working class to a victorious dictatorship of the proletariat. (Pet. Ex. 144, p. 43.)

As set forth previously, the December 1950 convention of respondent noted "real progress in our youth work and better understanding of our Party policy in this field." (Pet. Ex. 376, *supra*.) A review of the record shows that the Party youth policy has consistently and continues to conform with the requirement contained in the *Programme of the Communist International* calling for "Systematic work must also be carried on among the proletarian and peasant youth." (Pet. Ex. 125, p. 82.) The record likewise shows that respondent's policy of work among the youth includes training the youth in Marxism-Leninism, seeking to unite the youth in the spirit of internationalism, and building future Party cadres from among the youth. We find that respondent's policy on youth is to effectuate the policies of the Soviet Union and the world Communist movement.

#### d. NATIONAL LIBERATION

We have hereinbefore set forth the fact that Marxism-Leninism recognizes the possibilities of utilizing "the latent revolutionary capacities of the national liberation movement . . . for the purpose of overthrowing imperialism." (Pet. Ex. 121, p. 79.)

In 1931 the Communist International directed respondent that a program for the right of self-determination of the Negroes in the "Black Belt" should be the application of the national liberation movement in the United States in order to "win over to our side these millions of Negroes as active fellow-fighters in the struggle for the overthrow of bourgeois power throughout America." (Pet. Ex. 134, pp. 154, 167.) Respondent's official Bittelman in an article published in *The Communist* in March 1934 discussing this and other directives from the Comintern stated that "the national-revolutionary movement of the Negroes" in the



[fol. 2550] "Black Belt" is "one of the allies of the American proletariat in the struggle for the dictatorship of the proletariat." (Pet. Ex. 126, p. 244.) This same official in an article published in *Political Affairs* in May 1951 similarly stated:

"Within the boundaries of our country, an oppressed nation, the Negro people in the Black Belt of the South, is fighting for full freedom . . . not only the Negro workers, but the Negro people as a whole . . . are a most important and staunch ally of the American working class, and . . . the future fate of the American working class is closely bound up with the future of the Negro nation." (Pet. Ex. 484, p. 22.)

The self-determination of the Negroes to be championed by respondent under the Comintern directive consists of unconditional autonomy-separation, or secession from the United States and the establishment of a separate Negro government in the so-called Black Belt of the South. If no proletarian revolution has occurred at the time this government is established, respondent is to support the rebellious government of the Negro republic in order to weaken the Government of the United States and thus aid in precipitating and executing the proletarian revolution. If, however, the proletariat has come to power in the United States at the time then the Communist Negroes must come out against separation of the Negro republic from federation with the proletarian government of the United States.

While a student in 1931 at the Lenin School in Moscow, Nowell was taught that the Negroes in the United States constituted part of the colonial question and that the Communists were to help colonial countries break themselves away from their mother countries since this would weaken the mother countries and thereby aid the Communist Parties in those countries in carrying through a revolution and establishing a Communist dictatorship. Nowell was disciplined while in the Soviet Union for voicing disagreement with the theory and demand for separation and secession by the Negroes from the Government of the United States and the establishment of a separate government.

During Nowell's period of membership in respondent, definite steps were taken to execute the program of the Comintern with respect to the application of the Negro self-determination movement.

There is not serious dispute that respondent has consistently advocated the right of self-determination of the Negro people in the "Black Belt" in the United States. Respondent's position in this respect is summed up by its witness, Dr. Aptheker, as follows:

[fol. 2551] "... I would stick to my answer that the Negro question is a national question, it is certainly not something dictated from abroad or by the Communist International. The Negro question is a national question, is a reflection of objective reality. If it is dictated, it is dictated by life." (Tr. 14149.)

Dr. Aptheker states that although certain Negro leaders after the Civil War thought in terms of the concept of Negro nationalism, that was not known to the leaders of respondent and was not used by respondent in evolving its position on the Negro question. Also, that at the time the policy of self-determination of the Negro people and the Black Belt was enunciated by the Party, it was not the policy advocated, in the development sense at least, by the majority of the Negro people or a majority of their leaders.

The purposes of respondent's policy and activities for the "self-determination" or "national liberation" of the Negroes has significance.

Further indication of the purposes was contained in respondent's *Manual on Organization*, issued in the 1930's, which states that the Negro people are "the other important ally" in relating those that the proletariat must win to its cause, and "without whom there cannot be a successful revolution." (Pet. Ex. 145, pp. 14-15.) The *Manual* quotes the following from an "Open Letter" adopted by respondent's Central Committee in 1933:

"The Party must mobilize the masses for the struggle for equal rights of the Negroes and for the right of self-determination for the Negroes in the Black Belt. It must ruthlessly combat any form of

white chauvinism and Jim-Crow practices. It must not only in words, but in deeds, overcome all obstacles to the drawing in of the best elements of the Negro proletariat, who in the recent years have shown themselves to be self-sacrificing fighters in the struggle against capital: . . . " (*Ibid.*, pp. 15-16.)

Benjamin Davis, National Committee member, in his report to respondent's 15th convention, held on December 28-31, 1950, in New York City, said an important feature of the Negro liberation movement is "the international significance of this question" (Pet. Ex. 379); that the Party's line on the Negro question is a Leninist-Stalinist principle and method of work" (*ibid.*, p. 19); and that:

[fol. 2552] "Tendencies to treat the Negro people as mere victims of oppression, without seeing their unique positive and revolutionary role in the struggle against capitalist reaction are a patronizing form of white chauvinism." (*Ibid.*, p. 19.)

John Williamson, also reporting to the 15th National Convention, pointed out that "the cause of the working class as a whole cannot advance unless a firm alliance is established with the Negro people, and unless the working class assumes its full responsibility in support of the struggle of the oppressed Negro nation for freedom." (Pet. Ex. 376, p. 69.) Jim Jackson, another of respondent's leaders puts it as follows:

"The development of higher levels of the Negro national revolutionary struggle in the Black Belt, and the broad mass movement for democratic rights in the South as a whole, is an indispensable prerequisite for insuring the victory of the working class and the American people over the menacing challenge of the ruling class forces of fascism and war *presently*, and for working class victory over capitalism *ultimately*. This is a basic fundamental in the strategy for working class victory, and a special feature of the path to the triumph of Socialism in our country." (Pet. Ex. 376, p. 119.)

An article in *Political Affairs* for January 1951, entitled "Working-Class and People's Unity for Peace! (Main Resolution of the 15th National Convention. C.P.U.S.A.)" characterizes the Negro people as a "tremendous reservoir of strength for the whole democratic movement" (Pet. Ex. 378, p. 11) and states:

"Because U.S. imperialism is compelled to cloak with demagogic phrases about democracy and equality its drive for world conquest, particularly its military assault against the colonial liberation movement in Asia, the Negro question tears the mask off of Wall Street's real face and assumes the greatest international significance." (*Ibid.*, p. 17.)

Evans attended a regional convention of respondent in January 1950 where one of the subjects was the necessity for the establishment of a Negro nation in the South. He stated on cross-examination regarding respondent's activities in behalf of certain individual Negroes that such activities and respondent's efforts to raise the economic and social level of the Negroes were really a part of the program to rally the Negroes around causes so as to publicize the Party and obtain Negro help in achieving the Party [fol. 2553] objective of socialism. As hereinbefore found, Cummings was taught, while a member of respondent, that an objective was to infiltrate trade unions, Negro organizations, and other organizations so as to take control of them and eventually change the system of the American Government.

Our earlier findings under the heading "World Communist Movement" include respondent's support of so-called national liberation movements in other countries, e.g., in China both before and after the Communist successes there. When viewed against these findings respondent's policy of using the United States Negroes for the application in the United States of the so-called national liberation policy has added materiality. Party statements in *Political Affairs* for February 1951 evidence further the common purpose of respondent's policy on the Negroes in the United States and the national liberation and colonial programs of world Communism. These statements include:

"Since it is 'our bourgeoisie' that today strives to crush the rising colonial-liberation movements and prevent their advance to independence, it is the special responsibility of our Party to strengthen the bond of international solidarity between the American working class and the peoples in the colonies. It is our responsibility to win broad support for the independence struggles in Asia and Africa, for the freedom-struggle of the long-suffering colonial people of Puerto Rico, and to strengthen the alliance of the working class with the national liberation movement of the Negro people. (Pet. Ex. 376, p. 188.)

"It is, furthermore, necessary that our Communist cadres, in fact our entire membership, deepen their understanding of the national and colonial question, so that we fully realize the special responsibility of proletarian internationalism which rests upon the working class and its vanguard in the land which oppresses other peoples: Karl Marx long ago pointed out that 'no nation can be free if it oppresses other nations.' Marxism-Leninism emphasizes that the working class of the oppressor nation must give direct aid and support to the liberation movement of the oppressed peoples, if it itself is to achieve emancipation. We have the duty to master this fundamental principle because of the need to assure working-class solidarity for the liberation struggle of the Negro people, to free the oppressed Negro nation in the Black Belt from Wall [fol. 2554] Street-Bourbon bondage. And this responsibility becomes heightened today when U.S. imperialism has become the main force to keep the colonial world enslaved." (*Ibid.*, p. 189.)

#### e. CONCLUSIONS ON RESPONDENT'S POLICIES, PROGRAMS, AND ACTIVITIES

Respondent's policies, programs, and activities were originally formulated and carried out pursuant to directives of the foreign leadership of the world Communist movement. Such policies, programs, and activities of respondent have

been consistently applied throughout respondent's existence in the United States without change or repudiation. Various tactical fluctuations in emphasis have followed those laid down by the world Communist movement. An examination of respondent's current activities shows respondent is still pursuing policies enunciated by the Soviet Union through the Communist International. Respondent's policies, programs, and activities regarding trade unions, youth, and national minorities have as their fundamental purpose to effectuate the policies of the Soviet Union and to further the world Communist movement.

#### 6. NONDEVIATION

Section 13(c) (2) of the Act provides that the Board shall take into consideration "the extent to which its [respondent's] views and policies do not deviate from those of such foreign government or foreign organization."

The petition alleges, in part, on this subject:

"Throughout its existence the Communist Party never knowingly has deviated from the views and policies of the government and Communist Party of the Soviet Union, the Communist International, the Communist Information Bureau and other leaders of the world Communist movement. Whenever such views and policies have conflicted with the position taken by the Government of the United States, the Communist Party has opposed the position of the United States. . . ."

[fol. 2555] Dr. Philip E. Mosely, Professor of International Relations at Columbia University and Director of the University's Russian Institute, was petitioner's principal witness for the purpose of establishing that respondent's views and policies do not deviate from those of the Soviet Union. Dr. Mosely has had a distinguished and active career in the field of international relations and for more than 20 years has devoted his research primarily to Russian political and diplomatic history. While so doing he has had occasion to analyze carefully the publications and other documents issued by respondent and the Soviet



Union. He is eminently qualified to testify as an expert on evidence relative to the "nondeviation" criterion of the Act, and we so regard him.

Dr. Mosely's testimony traced the continuing stream of international questions upon which both the Soviet Union and respondent have announced a position. He enumerated some 45 international questions of major import,<sup>92</sup> extending over the past 30 years, with respect to which there was, as revealed by his testimony, no substantial difference between the position announced on each by the Soviet Union through its official and controlled organs and that announced by the CPUSA through its official and controlled organs. On each specific topic, several exhibits illustrating the views and policies of the Soviet Union and the CPUSA, respectively, were introduced contemporaneously with Dr. Mosely's oral testimony.

Respondent contends that the phrase "do not deviate" as used in the Act should be interpreted to mean "following a course already established" and that, since a substantial number of petitioner's exhibits illustrating the view or policy of respondent predated the exhibits expressing the Soviet view or policy, they did not show that respondent has not deviated from the Soviet Union view, but show [fol. 2556] the contrary. Assertedly this proposition is reinforced by the absence of testimony of Dr. Mosely to establish that the announcement of the Soviet view had preceded respondent's expression of the same topic.

<sup>92</sup> Among these are the following: the League of Nations; Soviet Union purge trials, 1937; Russo-Finnish War, 1939; Russian invasion of Poland, 1939; Hitler-Stalin nonaggression pact, 1939; attitude toward World War II before and after German attack on Soviet Union; incorporation of Latvia, Estonia, and Lithuania into the Soviet Union, 1940; second front in Europe; dissolution of the Communist International, 1943; revision of Montreux Convention, 1946; Communist movements in Bulgaria, Roumania, Hungary, Albania, China, Czechoslovakia, and Yugoslavia; Berlin Blockade, 1948; West Germany; Italian election, 1948; North Atlantic Pact; control of atomic energy; election of Yugoslavia to the United Nations Security Council, 1949; Cardinal Mindszenty case, 1949; United Nations police action in Korea; Communist China's intervention in Korea, 1950; seating of Communist China in the United Nations; Peace Treaty with Japan, 1951; and peace in Korea.

Petitioner, on the other hand, took the position at the outset of Dr. Mosely's testimony, and in advance of the raising of this objection by respondent, that the exhibits under discussion were offered in evidence merely to illustrate and show a documentary basis for the oral testimony of Dr. Mosely on the respective international questions and were not intended to establish the date of the first announcement thereon by either the Soviet Union or the CPUSA. Petitioner further argued that in many instances the Soviet view or policy must necessarily have come first, particularly since the first announcement thereof may have taken the form of a *fait accompli*, as for example the Soviet Union's signing of the Hitler-Stalin nonaggression pact.

We have considered Dr. Mosely's testimony with other evidence of record,<sup>93</sup> all of which is mutually corroborative and establishes that respondent invariably follows the views and policies of the Soviet Union. We do not believe, therefore, that the date sequence of the exhibits placed in evidence through Dr. Mosely is controlling of whether respondent's views and policies have deviated from those of the Soviet Union. As we construe the "nondeviation" criterion it requires the Board to assess this vast spread of evidence to determine if respondent's views and policies ever turned aside over the years of its existence from a course of constant agreement with those of the Soviet Union.

Respondent was not permitted at the hearing to put in issue the merits of its views or policies which were placed in evidence by petitioner to establish "nondeviation," and rightly so, for in applying this criterion the Board is required to view cumulatively the spread of the evidence relating to the nondeviation of views and policies without deciding their merits. This is not to say, however, that the purpose of certain of these policies, such as those dealing with the Negro, labor, youth, imperialism, and the colonial and national liberation policies, discussed earlier herein, may not be relevant in viewing the record as a whole.

[fol. 2557] We now proceed to set forth our findings based on a preponderance of the evidence relative to this criterion.

<sup>93</sup> This consists of documentary evidence, and oral testimony of witnesses Gitlow, Kornfeder, Markward, Meyer, Budenz, Lautner, Eysan, and Jakobowitz, among others.

The nature of the evidence adduced through Dr. Mosely is well illustrated by his testimony and documents submitted through him concerning the nonaggression pact entered into by Hitler and Stalin, known as the Hitler-Stalin Pact of August 23, 1939. He established the identity of views between the CPUSA and the Soviet Union prior to the making of this Pact; the parallel attitude of the Soviet Union and the CPUSA toward World War II while this Pact was in effect; and the simultaneous change of policy on the part of the Soviet Union and the CPUSA after June 22, 1941, the date on which the Pact was abrogated by the German attack on the Soviet Union.

To further illustrate this, it is established that prior to the Hitler-Stalin Pact, respondent, conforming to the position taken by the Soviet Union and the world Communist movement's anti-fascist united front policy, had denounced fascism in Nazi Germany as the main threat of aggression in the world and as the foremost danger to democracy and peace. Notwithstanding that the signing of the Pact by the Soviet Union on August 23, 1939, constituted a reversal of the anti-fascist line and caused considerable consternation and defection among respondent's leaders and members, respondent immediately switched to the Soviet Union's position and hailed the nonaggression agreement as an important contribution to peace. When Germany invaded Poland, respondent echoed the Soviet assertion that the Pact continued to be an important contribution to peace as it would limit the spread of war and, further, that opposition to this territorial expansion was the work of warmongers. After the defeat of Poland, the Soviet Union and respondent both took the position that England and France were guilty of prolonging the war; that the war was an "unjust"<sup>91</sup> and imperialistic war and that no country which hoped for peace should assist England and France. Respondent, like the Soviet Union, strongly opposed lend-lease aid by the United States to Great Britain. Immediately after the German attack on the Soviet Union on June 22, 1941, however, the latter reversed

<sup>91</sup> See discussion of "just" and "unjust" wars under the preceding sections, "Marxism-Leninism" and "Anti-Imperialism," *supra*.

its position and almost simultaneously respondent did the same: both suddenly concluded that the character of the war had changed; World War II became in the eyes of both a "just" war; they urged that the "Allies" should have the support of the United States and of all freedom-loving people; they advocated aid by the United States to Great Britain and to the Soviet Union and respondent branded those in the United States who opposed such aid as agents of Hitler. Soon after the German attack on the Soviet [fol. 2558] Union, respondent joined with the Soviet Union in demanding the opening of a second front "now" with the United States participating therein.

The views of the Soviet Union and respondent likewise coincided on the trials and executions in the Soviet Union in 1937, with respondent accepting Soviet positions over the criticisms of the trials contained in the "capitalist press";<sup>95</sup> respondent echoed the statements of the Soviet Union concerning the Russo-Finnish War; the same situation prevailed in regard to the absorption of Latvia, Estonia, and Lithuania by the Soviet Union. The Soviet Union and respondent assumed the same position in 1947-1949 with regard to the internal crisis in Greece, both supporting the actions of the so-called Greek guerillas; and they coincided in their views supporting the seizure of control of the Czech Government by the Communist Party of Czechoslovakia in 1948.

The evidence relative to this criterion further established that, prior to the Cominform resolution which attacked the Tito Government, respondent paralleled the Soviet Union in giving approval of the course of post-World War II developments in Yugoslavia and of the Tito Government. On June 28, 1948, however, the Cominform issued a resolution, initiated through an exposure by the Soviet Union, which attacked Tito and his regime in bitter terms; among other

<sup>95</sup> These trials and executions in the Soviet Union were of persons designated as Trotskyite counter-revolutionists and agents of fascism. We have heretofore set forth and later note the provision in respondent's 1942 constitution prohibiting members from association with "Trotskyites" (those who deviate from the Soviet line), and the comparable provision in the current Party constitution prohibiting association with "enemies of the working-class."

charges, Tito and his leaders were derided for having entertained the hope that Yugoslavia could build "socialism" without "the support of the Soviet Union." (Pet. Ex. 344, p. 697.) One day later, on June 29, 1948, respondent also reversed its position on the Tito Government and issued a statement lauding this Cominform resolution and criticizing the Tito regime for showing hostility to the Soviet Union and for attempting to "curry favor with Anglo-American imperialism." (Pet. Ex. 260, p. 699.) This reversal, too, caused consternation among respondent's members (of Slavic origin) and some were lost to the Party.

The views and policies of the Soviet Union and the CPUSA were identical and were opposed to those of the United States on the question of the Berlin Blockade in 1948, and have likewise coincided in strong opposition to United States policies on the course of events in post-World War II Germany. The Soviet Union and the CPUSA [fol. 2559] have both maintained the same policies with regard to the Truman Doctrine, the Marshall Plan, ECA, and the North Atlantic Pact, namely, that the United States' participation and leadership in these measures are for the aggressive purpose of domination of the world; whereas, the opposition policies of the Soviet Union and respondent allegedly foster peace and democracy.

The Soviet Union and respondent maintained the same position in regard to the Stockholm Peace Petition in 1950, asserting that all true proponents of peace should support the petition, which was issued by a committee of the World Peace Congress. Respondent supported the Soviet Union's position, as opposed to that of the United States, concerning control and inspection of atomic energy. The same situation prevails regarding the seating of Yugoslavia in the United Nations Security Council, with respondent supporting the Soviet Union's opposition to the United States on this question. The Soviet Union and the United States Government have taken opposite positions with respect to the representation of China in the United Nations; the CPUSA maintains the Soviet position, which favors the seating of the representatives of the Chinese Democratic People's Republic and the exclusion of representatives of the Chinese Nationalist Government. Respondent concurred

with the views of the Soviet Union in opposition to the United States peace treaty with Japan.

The CPUSA's position in support of the conduct of the Czechoslovakian Government in the William Oatis case (American correspondent) coincides with the Soviet Union's position thereon.

The testimony and documentary evidence also established that the CPUSA and the Soviet Union expressed the same views regarding Korea; both maintain that the Syngman Rhee Government is a reactionary "puppet regime"; both vigorously condemn the hostilities in Korea as the direct result of American imperialism and aggression; both insist the United Nations police action to be illegal and aggressive toward North Korea; both maintain that this war constitutes a threat to the Chinese People's Republic which justifies the Chinese Communist intervention in the conflict; both assert that the Chinese intervention in support of North Korea aids the struggle of "peace-loving" peoples of the world, which are led by the Soviet Union, against the program of the American imperialist aggressors; both charge the United States with desiring continuation and expansion of the Korean War; both insist that the United States disrupted and delayed cease-fire negotiations and blocked peace in Korea; and both demanded acceptance of the proposals for cease-fire and "peace" made on behalf of the North Korea People's Republic. In short, respondent [fol. 2560] and the Soviet Union, regarding Korea and the Korean conflict, coincide completely in their condemnation of the policies of the United States Government in its support of the United Nations in Korea.

In addition, other witnesses established that during the existence of the Communist International respondent did not deviate from Comintern instructions in a single instance; further, that a CPUSA member could not disagree with a position taken by the Cominform and continue to remain a Party member;<sup>96</sup> that in those instances in which

<sup>96</sup> There have been instances of internal deviation within the CPUSA. Such instances usually resulted in dismissal from the Party, as in the cases of Gitlow and Browder. These instances highlight the intolerability with which any deviation is regarded by both respondent and the Soviet Union and have been con-



the policies of the United States and the Soviet Union appeared to be in conflict, respondent at no time expressed sympathy with the policy of the United States Government; that the Soviet Union was never criticized in Party circles, but, on the contrary, it was a cardinal rule to praise the Soviet Union at all times; that in 1941 and prior thereto, a Moscow news agency supplied respondent with political and other news dispatches which were distributed to respondent's leaders so that they could keep informed of the "Party line" and its interpretations; and that the aforementioned dispatches were regarded by respondent as being directives from the Soviet Union on positions to be taken, and were implemented accordingly. Also, the discipline which pervades the world Communist movement and the respondent, as set out *supra*, is such that so-called deviations from the Soviet Union's policies were not tolerated. An exemplification of this appears in respondent's 1942 constitution, which provides that no CPUSA member is permitted to have a personal or a political relationship with "Trotskyites," one of the terms used in CPUSA and Soviet Union circles in an odious sense to signify persons sympathetic to a system of deviation from the official "line" of the Soviet Union. The present Party constitution uses the phrase "enemies of the working-class" in place of "Trotskyites."

It is also shown by evidence in addition to that adduced through Dr. Mosely that throughout the entire existence of respondent, including the present, it has agreed with the view of the Soviet Union to the effect that the United States is an imperialistic nation which seeks world domination and whose Government should be overthrown, whereas the [Vol. 2561] Soviet Union is a true democracy in search of peace and its aims should be fostered.<sup>97</sup> When the United

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sidered in assessing the probity of the evidence in this section to respondent's status as placed in issue here. It is true, of course, that during Party crises, such as these, temporarily there are factions and conflicting views. But when the Party's course solidifies retention of an opposed position is considered inconsistent with continued membership.

<sup>97</sup> See "Anti-Imperialism" *supra*, and "Allegiance" *infra*.

States was a potential or actual ally of the Soviet Union this chant was not sung by either the Soviet Union or the CPUSA. The evidence of basic sameness of underlying policies such as imperialism, national liberation, the Negro, youth, and labor has been discussed elsewhere in this Report; however, it, too, shows that in all facets of its basic policies respondent adheres to and implements here the same policies as the Soviet Union.

Respondent made no effort to rebut the condition clearly shown to exist by petitioner's evidence. It offered no evidence to establish a conflict or cleavage between the policies of the Soviet Union and the CPUSA at any time or on any occasion. Nor is there any evidence to show that, where the views or policies of the United States as officially announced conflicted with the views of the Soviet Union, the CPUSA in any instance took a position thereon in harmony with the views of the United States, though its witnesses were repeatedly invited on cross-examination to show such an occasion. Each of respondent's witnesses evaded a direct answer to the question and, curiously enough, each gave a similar circuitous and equivocal answer stating that respondent's policies reflect what it conceives to be the true national interest of the American people; that if the views or policies of respondent and the Soviet Union are similar or identical, this proves only that the national interests of the people of the two nations are the same; that respondent takes the view that the true national interests of all people are identical; and that respondent arrives at its views independently.

These platitudes do not negate petitioner's evidence. Respondent's witnesses were unable to cite a single instance throughout its history where, in taking a position on a question which found the views or policies of the Soviet Union and the United States Government in conflict, the CPUSA had agreed with the announced position of the United States; nor could they show a single instance when the CPUSA had disagreed with the Soviet Union on any policy question where both respondent and the Soviet Union have announced a position.

The testimony of Dr. Mosely and documents submitted through him embraced a tremendous area of international

questions on which respondent and the Soviet Union have taken positions. We have pointed out a representative portion of them. The uniformity is constant and on a wide variety of questions, and is corroborated by other evidence of record.

It is a material consideration in viewing the spread of this evidence spanning thirty-odd years that respondent, for the first twenty such years in this area of activity, was required by the "Conditions" for membership in the Communist International to conform to the "programme and decisions" of the Comintern in its "propaganda and agitation" (Pet. Ex. 8, p. 27); that during the years since 1943 respondent has without a single exception, as before, continued to adhere to the views and policies of the Soviet Union; and that its witnesses when asked to do so were unable to show conflict in any of these policies. This is strong evidence that the preexisting relationship between respondent and the Soviet Union continued as before, notwithstanding the formal dissolution of the Comintern by the Soviet Union.

Also, in weighing the evidence set forth herein, we have considered respondent's adherence to Marxism-Leninism,<sup>98</sup> which in its essence evidences acceptance by respondent, as a Marxist-Leninist organization, of any position that the Soviet Union determines will advance the world Communist movement. Further, when it is taken into account that conformity to the program and policies of the world Communist movement was prescribed for respondent as a section of the World Party of Bolsheviks (Communist International), the continuation in unison with the Soviet Union, subsequent to 1940 and until the present, of these programs and policies enhances the probity of the more recent evidence pertaining to nondeviation to show that respondent is dominated and controlled by, and operates primarily to support the objectives of, the Soviet Union, and the world Communist movement.

The record precludes the conclusion which respondent would have us draw, i.e., that the uniformity of views results from sharing a common scientific outlook and inde-

<sup>98</sup> See "Marxism-Leninism" *supra*.

pendent application of principles by it and the Soviet Union. The great weight of the evidence is to the contrary.

We find on the entire record that the views and policies of respondent throughout its history invariably coincide with the views and policies of the Soviet Union. Moreover, respondent conforms immediately to each reversal in the Soviet Union's views and policies.

We find that respondent's views and policies do not deviate from those of the Soviet Union.

[fol. 2563]

#### 7. FINANCIAL AID

We are directed by the Act to consider "the extent to which it [respondent] receives financial or other aid, directly or indirectly, from or at the direction of such foreign government or foreign organization." (Section 13(e)(3).)

The petition alleges:

"The Communist Party now receives and from time to time in the past has received financial aid, from or at the direction of the government and Communist Party of the Soviet Union, the Communist International and the Communist Information Bureau. . . ."

There is considerable evidence, both testimonial and documentary, which establishes that during the 1920's and the 1930's respondent received both directly and indirectly financial and other aid from the Communist International and the Soviet Union and organizations in foreign countries under Communist regimes. The bulk of the evidence of direct financial aid relates to respondent's early history when, in order to aid it to increase its membership and influence and to execute various decisions of the Comintern and to equip it with an official organ, the Communist International granted subsidies to the CPUSA. The indispensability of a Party press to Communist Party operations in this country, as set out *supra*, fols. 2519-2522, attests to the importance of Comintern aid to the *Daily Worker*.

The Comintern directed the establishment of the *Daily Worker* and contributed the sum of \$35,000 to respondent in 1924 for this purpose.

Petitioner's witness Korpfeder establishes that the *Daily Worker* was subsidized continuously by the Comintern since its foundation, while he was in the Party.

When the Communist International announced the decision on the 1929 factional dispute within the CPUSA, it gave a substantial sum of money<sup>99</sup> to the chairman of the new Secretariat of the CPUSA, which had been formed [fol. 2564] by it to be used to establish a new newspaper, subservient to the Communist International, in the event that the CPUSA lost control of the *Daily Worker*.

Similarly, the Comintern subsidized *Novy Mir*, a Communist Party Russian language newspaper, and aided this paper through supplying gratis publications, books and art works, which were sold and the proceeds retained by the paper. Also subsidized was the founding of the CPUSA's newspaper *Freiheit*. In the 1920's, indirect aid was accorded by a show troupe called the "Blue Blouses," and funds realized from their tour in this country were distributed to various organizations by respondent, including itself and the *Daily Worker*. During the years 1930 to 1934, the Comintern provided subsidies for *Labor Unity*, a labor magazine operated under the direction of the CPUSA.

During the 1930's, indirect aid was rendered the *Daily Worker* by free political news dispatches from the Runag news service in Moscow, which were used by the editorial staff of the *Daily Worker* and were also distributed to the Party leadership for scrutiny and study. After the passage of the Foreign Agents Registration Act in 1938, these dispatches were sent to The Inter-continent News, a corporation which had been formed by respondent in New York City to handle the service in a manner that to all appearances would be independent of the *Daily Worker*. This medium in turn related the dispatches to the *Daily Worker*.

<sup>99</sup> Although Gitlow's testimony as to the exact amount of money involved in this particular transaction varied with prior statements made by him before other bodies, in the circumstances of this record, and since there is corroboration, the Board finds that substantial funds were disbursed to respondent by the Comintern for the purpose of effectuating an organ friendly to it.

at a nominal cost.<sup>100</sup> In 1929 the treasurer of the CPUSA stated that it was impossible to put additional CPUSA funds into the *Midwest Daily Record*, a CPUSA controlled paper, because at that time communications to their sources of funds abroad, i.e., the Soviet Union, had been disrupted.

Respondent's witness Gates specifically denies that during his tenure as editor of the *Daily Worker*<sup>101</sup> it ever received any financial aid from the Government of the Soviet [fol. 2565] Union, any agency of the Soviet Government, the CPSU or any of its representatives, the CI or any of its representatives, or the Cominform or any of its representatives, and denies any financial aid to the *Daily Worker* from any source at the direction of any of these named agencies.

Accordingly, we conclude that the Communist International and the Soviet Union have both directly and indirectly rendered during the 1920's and 1930's material financial and other aid to respondent by subsidizing and otherwise aiding the founding and the operation of the *Daily Worker* and other CPUSA publications.

The evidence pertaining to respondent's trade union policies has been heretofore discussed in the section of this Report entitled "Trade Union Work," and we will not set forth evidence showing aid to respondent from the Comintern enabling it to effectuate and carry out particular phases of this work.

<sup>100</sup> This news service from Moscow ceased in 1944 when the Department of Justice ordered The Intercontinent News either to label its news material as propaganda or to discontinue its service. Thereafter the *Bulletin* of the Soviet Embassy was used as a news source. Respondent argues that Budenz' testimony upon which this finding rests is not credible since CP Exhibits 70-75, consisting of *Daily Worker* and Intercontinent News Agency registration statements filed under the Foreign Agents Registration Act, show that this news service was not free. Budenz, who in fact signed one of these statements, explained they were filed to deny a status requiring registration and that they concealed rather than disclosed the facts. We have reviewed CP Exhibits 70-75, inclusive, but we do not credit them for the purpose offered in view of the testimony of petitioner's witness Budenz concerning them, which we accept.

<sup>101</sup> Gates became editor in 1947. Thus, his testimony rebuts none of petitioner's evidence of prior financial aid.



The Trade Union Educational League (TUEL) was formed in the early 1920's pursuant to instructions from the Communist International; the latter also furnished a subsidy for the initial financing of this newly-formed organization.

In 1928 a trade union delegation was organized in this country by the CPUSA at the direction of the Communist International, which partially financed the organization and expenses of the delegation's visit to the Soviet Union. Official Party minutes received as exhibits (Pet. Exs. 95, 98, 102) and witnesses Gitlow<sup>102</sup> and Kornfeder show that the Comintern granted substantial sums of money to the CPUSA for a campaign among the members of the United Mine Workers to defeat John L. Lewis for the union presidency.

After the Comintern resolution of the 1929 factional dispute in respondent, the chairman of the newly-formed Secretariat was given a substantial additional sum to finance enforcement among the members of the CPUSA of the decision reached in the Soviet Union regarding the leadership of the CPUSA:

[fol. 2566] Petitioner's witness Honig, who, as a member of respondent, was specializing in labor activities in the United States, was sent to the Soviet Union in 1934 to serve as a representative of the Trade Union Unity League at the Red International of Labor Unions at Moscow; the latter was a section of the Communist International. Funds for his trip were furnished by Jacob Golos, a representative of the Soviet Union in the United States, and his subsistence while in Moscow was borne by the Red International of Labor Unions.

Also relevant to respondent's labor activities, the record shows that in about 1929 the Communist International directed that respondent form port bureaus at leading ports

<sup>102</sup> Cross-examination of Gitlow revealed variations in the amounts of money involved; however, the documentary evidence and Kornfeder's testimony, when considered with Gitlow's testimony, all of which is unrebutted, make it clear that substantial funds were supplied to respondent by the Comintern and we have accordingly credited Gitlow's testimony to this extent.

in this country for the purpose of facilitating recruiting and organizational work on the waterfront and that it facilitated the establishment of such bureaus by furnishing funds.

Another method whereby respondent has been accorded aid by the Comintern and the Soviet Union has been in connection with travel and maintenance expenses of its officials and members travelling abroad on Party or Comintern business, including training missions. The need and importance of such aid is reflected in CPUSA minutes of its Political Committee and the testimony of a number of petitioner's witnesses. For example, Petitioner's Exhibit 89, CPUSA Political Committee minutes for November 1927, show a request from the Comintern that the CPUSA send a replacement for work in its information department and that the Party expressly provided that there be no expense to it. Gitlow explains this as meaning that the Comintern was to bear all travel and living expenses and pay the person sent as a replacement a salary as an employee of its Executive Committee. Further indicative of the relationship existing between the Comintern and respondent are other Political Committee minutes such as Petitioner's Exhibit 83, which shows a cable was to be sent to the Soviet Union concerning expenses for a trade union delegation to the effect that the CPUSA was "financially hard-pressed" and needed funds. This exhibit further shows that in September 1927 the Party's Political Committee unanimously voted to wire the Comintern that it would be unable to send any students to the Lenin School in Moscow unless money was cabled in advance by the Communist International for their fares.

Petitioner's evidence establishes that a number of persons, including witnesses for petitioner herein, went to Moscow and attended the Lenin School there, having their travel and subsistence expenses borne by the Communist International.

It is further established that in the 1920's and 1930's the Communist International financed the travel of CPUSA officials and members to and from the Soviet Union and on missions to other countries for the purpose of orienta-

tion and the conduct of official business on behalf of international communism, such as fulfilling representative functions in the Communist International; in addition to their subsistence, salaries were paid them in some instances by the Communist International:

Further, the CPUSA has received direct subsidies from the Comintern with respect to its political activities.

The Communist International contributed the sum of \$50,000 to respondent for the purpose of financing the 1924 political campaigns of William Z. Foster and Benjamin Gitlow, the Communist Party candidates for President and Vice President of the United States, respectively, and the Communist International likewise contributed a substantial sum to respondent to finance the campaigns of these persons as candidates for the same offices and on the same ticket in 1928.

Other indirect aid from the Soviet Union was rendered through Amtorg, a trading corporation of the Soviet Union, organized in the United States in 1924, which from its inception until 1929 rendered financial assistance to respondent by paying excessive rates for placing advertisements in CPUSA publications, and by making it possible for the Communist Party School of Business Relations to realize money from insurance and other activities. Also, the International Red Aid, in the late 1920's, sent Russian films to the United States free of any charge and the CPUSA determined the distribution of profits realized from their showing here.

Respondent's witness Flynn says that book stores, clubs, and some Party units did occasionally order books from abroad and sell them in this country, but asserts that there never were any such materials received in this country by any Party agency free or for a nominal cost. She testified that foreign Communist Parties seem to plead their poverty on the one hand and the wealth of the American Party on the other. She and respondent's witness Gates deny, without specific rebuttal of any of the instances of aid shown by petitioner's evidence, that the CPUSA has received financial aid from or at the direction of the Soviet Union or the Communist International during

their tenure on the National Committee<sup>103</sup> and state that the Party's funds have been obtained from dues, assessments on its members, and fund drives.

[fol. 2568] We find a preponderance of the evidence in the record establishes that substantial financial aid flowed intermittently in various forms to respondent from and at the direction of the Communist International and the Soviet Union principally during the formative period of respondent in the United States. We view this aid in the circumstances in which it was rendered as significant in showing that the Soviet Union helped to establish respondent in the United States as a going organization. The record contains no evidence of substantial financial aid subsequent to 1940 and none after 1944. However, the disappearance, so far as this record shows, of such assistance when respondent became a going organization does not detract from the probity of this evidence to show the character of the Party during the period in which the aid was rendered. And it is a tile in the mosaic.

[fol. 2569] 8. TRAINING AND REPORTING

Sections 13(e)(4) and (5) of the Act provide that in determining whether or not an organization is a "Communist-action organization" the Board shall take into consideration:

"(4) the extent to which it [respondent] sends members or representatives to any foreign country for instruction or training in the principles, policies, strategy, or tactics of such world Communist movement; and

"(5) the extent to which it [respondent] reports to such foreign government or foreign organization or its representatives; . . ."

<sup>103</sup> Flynn went on the National Committee in 1938 and Gates went on it in 1945. Thus, Gates' testimony does not rebut petitioner's evidence, and Flynn's testimony reaches no substantial segment of such evidence. To the extent her testimony reaches contrary evidence, e.g., petitioner's evidence concerning the free news service, it does not preponderate.

The petition alleges inter alia:

"The Communist Party regularly reports and has reported to the government and Communist Party of the Soviet Union and to the Communist International and the Communist Information Bureau, and has sent members and representatives to the Soviet Union and other foreign countries for instruction and training in the principles, policies, strategy, and tactics of the world Communist movement...."

Respondent denies the foregoing allegations of the petition, but states in its amended answer that during the period of its affiliation with the Communist International its members and representatives attended and participated in Communist International Congresses and committees; that its members have from time to time visited foreign countries, including the Soviet Union; and that, in the past, certain of them have studied in the Soviet Union. Respondent argues, however, that these conceded facts have no relevance to any issue in this proceeding. We do not agree with this contention, for clearly the past is pertinent in determining the present character of an organization under this Act.

The evidence pertaining to "training" and "reporting" is somewhat interwoven and we have, therefore, consolidated these subjects in this section of our Report.

Since the Party admits that its members have studied in the Soviet Union, that it has participated in the Communist International, and that it has sent representatives to the Soviet Union, it is unnecessary to set forth in this part of our Report the considerable amount of detailed [fol. 2570] evidence establishing these points, and we do so only to the extent it may be necessary for an understanding of the findings and their significance.

An elaborate world-embracing school system was established in Moscow for training Communists and preparing them for leadership roles in the world Communist movement. The Western University taught trainees from the semi-agrarian areas, such as the Balkan and Baltic countries; the Eastern University schooled trainees from the

Asiatic countries, such as China, Siam, and Korea; the Academy of Red Professors was a training school for theoreticians for the world Communist movement; a special section of the Frunze Military Academy was devoted to training students sent from foreign countries; and the Lenin School took in trainees from the "more advanced" countries, such as Germany, France, England, and the United States. Petitioner's witness Honig was an American instructor at the Lenin School in 1934-1935, where he taught labor subjects to a select group of respondent's members. In the main, however, the school's instructors were Russians.

To qualify for training in Moscow a CPUSA member had to be recommended by respondent and approved by the Communist International, which had established as qualifications for selection that the student be less than 36 years of age, have 5 years of active Party work, and be above average in ability.

From 1928 to 1936, many of respondent's outstanding members were sent to the Lenin School for varying periods, where they received training and instructions in the strategy and tactics of the world Communist movement. Among them were Gus Hall, Irving Potash,<sup>104</sup> Charles Krumbein, Joseph Kornfeder, George Siskind, Morris Childs, Ray Hansborough, Roddie Lester, Admiral Kilpatrick, Abraham Lewis, Margaret Unjus, Rudolph Baker, Selar, Harry Haywood, Odel Nowell, Charles White, Celia Parinsky, John Seoven, William Patterson, George Hewitt, Sam Nessin, Beatrice Siskin, Philip Raymond, John Marr, William Brown, Claude Lightfoot, William Taylor, Bill Kruse, and Bell. Many of the aforementioned persons held high positions in respondent's leading State, District, or National Committees,<sup>105</sup> including Nowell and Kornfeder, who testified for petitioner in this proceeding.

<sup>104</sup> Both convicted in 1949 of conspiring to teach and advocate the overthrow of the United States Government.

<sup>105</sup> Gus Hall signed respondent's amended answer in this proceeding as National Secretary of the CPUSA. Irving Potash was a member and Claude Lightfoot an alternate member of respondent's National Committee in 1950.



[fol. 2571] The evidence establishes that in the early 1930's respondent's students in the Lenin School were taught such subjects as Leninism; Marxism; the history of the labor movement; trade union and strike strategy; history of the Communist Party of the Soviet Union; history and organizational structure of the Communist International; the national and colonial problem, including the concept of a Negro nation in the "black belt" of the United States;<sup>195a</sup> the history of the CPUSA; international propaganda; the theory and practice of Soviet economy; revolutionary tactics; and the science of civil warfare. These subjects at the school were adapted to the peculiar conditions in the countries of the students, including the United States. For instance, the course given respondent's members on civil warfare included political and economic conditions in the United States, the culture of the people, the terrain, the histories of the United States and the CPUSA, and the degree of political maturity in the United States. Students in the course were taught also how to convert economic strikes into political strikes, and then into general strikes that might precipitate revolution. They were also taught how to assemble the guns and small arms of the major nations.

For the actual carrying out of the revolution, Red Army officers taught military details in both legal and guerrilla warfare, how to erect barricades, snipe, throw grenades, use gas masks, sabotage, take over the system of transportation, seize food supplies and persuade army units to fight with the insurgents and guerrillas. They were taught how to capture and hold hostages, capture arsenals, arm Communist supporters, utilize and destroy food and water supplies, and, in general, how to carry on a total revolution for the seizure of power. All this was taught with the object of establishing a dictatorship of the proletariat in the United States.

Concerning strategy and tactics, students at the Lenin School were taught, among other things, that "Partial demands" (i.e., demands within the framework of democratic

<sup>195a</sup> See subsection "National Liberation" for a discussion of this subject.

procedure (dealing with limited grievances on everyday problems) served as a tactical means, "a cutting edge," for the Party in mobilizing for the long range objective of the general strategy, this being the overthrow of capitalist governments everywhere through proletarian revolution. It is apparent from this Report that this tactic has been utilized constantly by respondent in this country. They were also taught there the concept of "just" and "unjust" wars.<sup>105b</sup>

[fol. 2572] Concerning the ultimate aim of the Party regarding capitalist-imperialist nations, students were taught that the class struggle prevailed throughout the capitalist world; that internal contradictions within these countries were becoming sharper; and that their international imperialist policies toward colonial peoples were becoming more oppressive. Further, that, in view of these political and economic conditions, it was the duty of the CPUSA, as a part of world communism, to cultivate revolutionary movements in colonial countries and, in striving for world socialism, to work for the overthrow and complete abolition of capitalist states and imperialism. In conformance with the foregoing, students from the United States were taught that the proletarian revolution was necessary and that it was their major duty to work under the leadership of the Communist International and respondent for the overthrow of the United States Government.<sup>106</sup>

<sup>105b</sup> An illustration of adherence by the Soviet Union and respondent to this principle is found in the sections "Marxism-Leninism" and "Anti-Imperialism."

<sup>106</sup> The texts used by respondent's members at the Lenin School included Lenin's *State and Revolution*; *Left Wing Communism*; *Military Revolution*; *Imperialistic War*; *What Is To Be Done?*; *How It Is To Be Done*; *Imperialism*; *Infantile Leftism*; a modern treatment of Lenin's works by Leontov entitled *Leninism by Leontov*; Stalin's *Foundations of Leninism* and *Problems of Leninism*; Engels' *Scientific Socialism*; the *Programme of the Communist International*; *Marx' Capital*; the *Communist Manifesto*; the *Theses and Statutes of the Third (Communist) International*, including the 21 conditions for membership therein; a number of writings by Soviet authors concerning political policies and the economy of the Soviet Union; and other works.

The purpose of Lenin School instruction as explained by Earl Browder, then leader of respondent, and as borne out by petitioner's evidence, was to develop CPUSA leaders and through them to raise the political and ideological level of the Party membership as required by the development and intensification of revolutionary situations developing in countries throughout the world, including the United States.

In addition to the formal institutionalized schooling in the Soviet Union, many of respondent's highest functionaries have received training through serving abroad in various positions of the International Communist organization. Petitioner's witness Honig, while functioning as CPUSA representative to the Red International of Labor Unions, was sent to various places in the Soviet Union to study Soviet operations and the activities of Soviet trade unions. William Z. Foster,<sup>107</sup> Earl Browder,<sup>108</sup> Charles [fol. 2573] Ruthenberg, and petitioner's witness Gitlow functioned for various periods in Moscow as members of the Soviet-controlled Executive Committee of the Communist International, and Foster also served on the Presidium of the Communist International. Petitioner's witness Kornfeder also received training by functioning in Moscow as a member of the Anglo-American Secretariats of the Comintern and the Profintern, and while in Moscow met Alexander Bittelman, who later became a high functionary of respondent and who, along with respondent's witness Flynn, was convicted under the Smith Act. William F. Dunne served as an alternate member of the Executive Committee of the Communist International in the 1920's. Bosse functioned in the Information Department of the Communist International in 1926 and 1927. In the early 1930's Clarence Hathaway functioned as a representative of respondent to the Communist International and also served as a member of the Anglo-American Secretariat of the Communist International in Moscow. Party leader Robert Minor succeeded Hathaway as respondent's representative to the Communist International. Other members

<sup>107</sup> Presently leader of respondent.

<sup>108</sup> Leader of respondent 1929-1945.

who served as the Party's representatives in Moscow include Louis Farina, John Reed, Nicholas Horawich, Israel Amter, J. Louis Engdahl, Max Bedacht, Harrison George, and H. M. Wicks. Morris Childs was a member of the Lander Secretariat of the Comintern. Harry Haywood served on the International Negro Bureau of the Communist International.

The record establishes that following their return to the United States members of respondent who had been trained and indoctrinated in the Soviet Union taught in respondent's schools and put into practice to the extent circumstances permitted, that which they had learned in the Soviet Union.

There is no credited evidence showing training of respondent's members in the Soviet Union subsequent to the outbreak of World War II.<sup>109</sup> However, it is established that the extensive foreign training set forth is still being effectuated in this country by respondent. This training was clearly a program initiated by the Soviet Union to indoctrinate while there outstanding workers and leaders of respondent so as to have a cadre for imparting such training to respondent's membership in the United States. Further, the cessation of the training is consistent with the Party's reason for formally disaffiliating from the Communist International. More important, however, a number of outstanding Party members and leaders, having received [fol. 2574] Soviet indoctrination, were enabled to train, similarly, students at Party schools in this country and to dispense their previous training through respondent's publications and activities.

We find that prior to 1939 respondent sent its members and representatives to the Soviet Union, at the latter's instance and with its financial assistance,<sup>110</sup> for instruction and training in the principles, policies, strategy and tactics

<sup>109</sup> We do not credit the testimony of witness Cummings concerning being solicited by functionaries of respondent in 1946 and 1947 to attend a school in the Soviet Union. In fact, due to his cross-examination, we have carefully scrutinized Cummings' testimony and have given it no effect except in the relatively few instances where findings are substantiated by his testimony.

<sup>110</sup> See findings under "Financial Aid," *supra*.

of the world Communist movement, as determined by the Soviet Union, for the purpose of adopting and effectuating such principles, policies, strategy and tactics in the United States, which it does.

There is considerable evidence of record showing that respondent has over many years reported on numerous occasions to the leadership of the world Communist movement, which we now set forth.

In 1926, William Z. Foster and Alexander Bittelman were in Moscow and made a written report to the Communist International covering respondent's activities during the year 1925 with reference to the economic and political situation in the United States, trade unions, Socialist Parties, Bolshevization of respondent, Leninist education, united front campaigns, Negroes, farmers, women, anti-imperialism and internal Party developments.<sup>111</sup> The witness Gitlow went to Moscow in 1927, 1928, and 1929 to discuss similar matters with Comintern officials. In 1929, Gitlow and other members of respondent traveled to the Soviet Union to participate in a hearing held in Moscow by the Communist International to resolve the factional dispute then raging in respondent.

Respondent's youth organization, known for a period as the Young Workers League, was in continuous communication with the Young Communist International. Reports of respondent's work on the Negro question were sent in the 1920's to the Eastern Department of the Comintern, which then had jurisdiction over this phase of respondent's activities. The witness Nowell reported on behalf of respondent in Moscow in 1930, on matters concerning the Trade Union Unity League (TUUL) in the United States. During his stay in Moscow, Nowell received instructions in various aspects of the world Communist movement, including the Negro question in the United States.

<sup>111</sup> Their report also contains various statements as to respondent's activities in carrying out "decisions" and "main lines of policy" dictated by the Communist International and, therefore, constitutes additional evidence to that reviewed in support of our finding and conclusion that respondent acts pursuant to directives and to effectuate policies of the Soviet Union.

[fol. 2575] The witness Honig went to Moscow in June 1934 and remained there until November 1935 as "referent" and official representative of respondent and the TUUL to the Red International of Labor Unions; a creature of the Communist International. Representing respondent, he attended meetings held in Moscow not less than once a week where representatives from various Communist Parties throughout the world reported the activities in which their parties were engaged among trade unions in their respective countries. Discussions based on these reports followed and Comintern leaders, who were present at these meetings determined whether the work was being carried out in the various countries according to Comintern instructions and registered their approval or disapproval. They also gave directions as to how this work should be conducted. Honig, while functioning in the Communist International's labor organization (RILU) in Moscow, received reports from Jack Stachel,<sup>112</sup> then acting head of the Trade Union Unity League in the United States, and Earl Browder, then head of respondent, concerning the failure of the San Francisco general strike of 1934. Reports which Honig received at the Red International of Labor Unions were generally mimeographed or typed when not of a confidential nature and were sometimes sent to the Soviet Union through the mails or delivered by students or Party leaders. Confidential reports were taken to the Soviet Union by American Party leaders and by couriers.

Minutes of meetings of respondent's Central Executive Committee and its Political Committee were sent to Moscow during the 1920's. Reports also were sent by various departments of respondent's national headquarters and by individual CPUSA leaders. In addition to the foregoing, the minutes of respondent's Political Committee covering official actions of respondent during the years 1925 to 1928 reflect many instances of reporting to the Communist International through other channels of communication.

The Information Department of the Communist International collected and digested for the Comintern's Executive Committee all information sent from the American

<sup>112</sup> Convicted in 1949 of conspiring to teach and advocate the overthrow of the United States Government.



Party. The Anglo-American Secretariat of the Communist International received reports from the English-speaking Communist Parties, including respondent; and during witness Kornfeder's membership on this Secretariat in the period 1927 to 1930 reports and recommendations from respondent were received concerning the situation then existing in the United Mine Workers Union.

In 1932, Earl Browder reported to the Communist International on behalf of respondent's Central Committee concerning economic developments in the United States [fol. 2576] as they related to the world situation at that time.

Elizabeth Gurley Flynn, a member of respondent's highest governing body and a witness for the respondent herein, visited France in 1945 and 1949. She went again in 1950, to write articles for the *Daily Worker*. As a fraternal representative of respondent she met with Communist Party leaders of other countries, including, in 1945, those from the Soviet Union.

Flynn attended a convention of the British Communist Party in 1945, where she met with respondent's witness Gates who was also at this convention. Flynn explains that she attended this Congress by "accident" as she happened to call up Mrs. Pollitt, wife of the General Secretary of the British Party and was invited to attend. She explains the purpose of her 1949 trip as being to attend a birthday party in Paris, France, for Marcel Cachin, editor of the French Communist paper *Humanite*, to whom she took greetings from respondent. She there met other leading Communists, such as Duclos and Thorez from France. In 1950, Flynn attended the Congress of the French Communist Party in a suburb of Paris fraternally representing respondent and while abroad also attended a Congress of the British Communist Party in London to which she brought greetings from respondent and spoke concerning problems common to both Parties. She explains her attendance at this Congress by saying "... again it seems coincidental, but it is a fact that there was a London Party Congress going on which I had not known about, and which they whisked me off to, a postman's holiday. . . ." (Tr. 13683-4.)

Flynn testified that she would not consider her conversations with foreign Communists, including members of the Soviet Communist Party, as reports, but states they were simply an exchange of experiences between persons with common interests.

While we do not view this evidence as establishing that respondent has, through Flynn, reported to representatives of the world Communist movement, in the context of this record and evaluating her testimony we do not credit her testimony that she has not reported.

The record discloses an instance where, by means unknown, the content of an important letter written by William Z. Foster concerning respondent's affairs was communicated to Jacques Duclos, General Secretary of the Communist Party of France and a former member of the Executive Committee of the Communist International. The letter in question played a decisive part in respondent's reconstitution in 1945, as elsewhere herein covered.<sup>113</sup> [fol. 2577]. The record further shows that respondent has reported its program and activities to the Soviet Union through Comintern representatives and other agents of the Soviet Union in the United States,<sup>114</sup> who exerted influence and control over the leadership and programs of respondent.

In addition to respondent's reporting in the aforementioned ways, the record establishes the existence of another form of reporting through the issuance and exchange of significant information in open communications often in the form of "greetings," which were generally published in Communist publications. When the evidence discussed earlier in this Report which shows the Communist technique of utilizing freedom of the press for revolutionary communication purposes, and that showing the use and importance of official Communist organs is considered, the documentary material and testimony now to be discussed takes on a materiality which would not ordinarily attach to such evidence.

<sup>113</sup> See "Respondent's Internal Organization," *supra*.

<sup>114</sup> See subsection "Foreign Representatives in the United States," *supra*.

This type communication commenced early in respondent's history and we will cite typical examples of the many of record. The following "resolutions" were adopted by respondent at a convention in 1921 and sent to the Soviet Union:

"2. Greetings to the Third World Congress of the Communist International.

"... In the name of the revolutionary proletariat of America, we affirm our determination to fight under the banner of the Communist International for the overthrow of American imperialism and for the establishment of the proletarian dictatorship. Hail to the International Soviet Republic! Long live the Communist International!

"3. Greetings to the Soviet Republic.

"The unified party, the Communist Party of America, declares that it will render all possible assistance to the Russian Soviet Republic in its struggle against the counter-revolutionary bands of the world imperialism. The Communist Party of America declares that only [fol. 2578] by the overthrow of world imperialism will the safety and mastery of the Soviet Republic over its enemies be definitely assured. The Communist Party of America pledges itself to rally the revolutionary proletariat of America for the annihilation of the most formidable stronghold of world imperialism: the American capitalist state, and to struggle for the establishment of the proletarian dictatorship. Down with world imperialism! Hail to the universal Soviet Republic! Long live the international solidarity of the workers!

"4. To the Third World Congress of the Communist International.

"The Unity Convention of the Communist [sic] of America and the United Communist Party of America fully upholds and endorses the firm and uncompromising stand stand [sic] of the Executive Committee of

the Communist International against the opportunistic and centrist elements in various countries—in Italy (Serrati), and in German (Levi). The convention instructs its delegates to the third world congress to uphold and defend the stand of the Executive Committee of the Communist International. . . .” (Pet. Ex. 13.)

In September 1927, on the occasion of its Fifth Convention, respondent received one from the Comintern that was read to the Convention by acting chairman Gitlow, after which the governing body of respondent was instructed to draw up a reply. The communication from the Comintern, in part, follows:

“In the country of the most powerful imperialism and a most brutal capitalist class the Communist Party can fulfill its duty and can become the leader of the working class against imperialism and capitalist aggression only if it is united and if it is not torn to pieces by factional struggle.

“The Comintern considers as one of the central tasks of the Party the *extermination of all factionalism* and the *unification* organizationally as well as ideologically. It will be the duty of the newly elected Central Executive Committee to lead the Party in a non-factional [fol. 2579] spirit and it will be the duty of the whole Party membership to rally around the Central Executive Committee which it itself shall have chosen. . . .” (Pet. Ex. 23, emphasis added.)

This elicited a response which respondent openly declared to be a “reply” and in which it gave assurances to the Communist International that it would comply with what were, in effect, the directions contained in the Comintern “greeting.” This reply is as follows:

“The Fifth Convention of the Workers (Communist) Party greets the international leader of the working class, the Communist International. Under its leadership and with our own firm and unanimous determination to unify our Party, we will overcome the

tremendous difficulties in the path of building a mass Communist Party in America. The Convention recognizes fully as Party's task the winning of the American proletariat for the revolutionary struggle against American imperialism.

"In the execution of this task we are inspired and guided by the principles of Marxism and Leninism, by the experiences of the victorious struggles of the Russian proletariat and the heroic battles of the exploited and oppressed masses of Europe and Asia. The Convention and the incoming Central Executive Committee pledge themselves speedily to *eliminate all remnants of factionalism* and to unify the Party as a prerequisite for the further success of our work.

"We pledge *the unification of our Party* and to fight more effectively for the defense of the Soviet Union and the Chinese revolution and against the war danger as well as to resist more effectively the offensive of the capitalist reaction and the reactionary trade union bureaucracy against our Party and the militant section of the American working class.

"The Convention is spurred by a full consciousness of its duty to recruit the toiling masses of America for relentless struggle against American imperialism.

"Long Live the Soviet Union!

[fol. 2580] "Long Live the Communist International!

"Fifth National Convention.

"Workers (Communist) Party."

(Pet. Ex. 24, emphasis added.)

On the occasion of the Sixth Convention of respondent, in 1929, another open communication was sent to the Communist International in Moscow which contained the following:

"We greet our Communist International leadership and pledge our Convention and our Party to prepare itself, to strengthen itself, to clarify itself, for its share of this task. It will close its ranks, it will cleanse its ideology from the poison of opportunism, it will defeat Trotskyism, it will mobilize against and lead

the American proletariat for the struggle against the imperialist war; *it will mobilize the American workers for the defense of our Soviet Union and for the final defeat of American imperialism by the revolutionary overthrow of American capitalist rule.*

“Long Live Leninism!”

“Long Live the Communist International!”

(Pet. Ex. 28, emphasis added.)

On December 21, 1949, the *Daily Worker* reprinted a telegram sent by respondent to Joseph Stalin on his 70th birthday which states, among other things:

“... Like the Communists and other true partisans of peace, democracy and progress in all lands, we hail your more than 50 years of sterling leadership in the interest of the international working class and humanity.

“... Under a Hitler-like anti-Soviet and anti-Communist smokescreen, the American imperialists launched their predatory and aggressive Truman Doctrine, Marshall Plan, and North Atlantic Pact.

[fol. 2581] “Undaunted by the threats of the war instigators, the USSR steadfastly pursues its Stalinist peace policy and promotes cooperation with all who strive for peace. And the mighty world camp of peace, democracy and socialism headed by the Soviet Union, daily becomes more powerful and is destined to triumph.

“In our country, too, the organized peace forces, among the workers, the Negro people, men and women of science and culture, are growing and will continue to grow in unison with the peace forces of the world. ...” (Pet. Ex. 375.)

After stating that American people “favor acceptance” of Stalin’s proposals for a “Pact of Peace, for demilitarization



and democratizing Germany and Japan, . . . outlawing the atom bomb," the telegram declares that the American people envy and admire the Soviet Union's peaceful harnessing of atomic energy and that they rejoice at the victory of the Chinese Communists and their bond with the Soviet Union. It closes by stating:

"With full confidence in the American working class and people, the Communist Party of the USA exerts every effort to assure that by their united action they will check and help defeat the fascist-minded monopolists and war-mongers. As this united action grows in influence and scope, it will bring its full weight to bear for the achievement of an American-Soviet pact of peace and friendship—the cornerstone for world peace.

"Long life to you, Comrade Stalin, and to your great and enduring contributions to world peace, democracy and Socialism." (Pet. Ex. 375.)

Petitioner's witness Lautner establishes that the primary significance of this "greeting" lies in respondent's affirmation of loyalty to Stalin as the acknowledged leader of the world Communist movement.

That such communications actually convey significant messages between members of the world Communist movement when the wording appears comparatively innocuous to the uninitiate is made clear by both testimonial and documentary evidence of record. The following quotation from the August 1, 1948, issue of *For a Lasting Peace, for a [Vol. 2582] People's Democracy*, official organ of the Communist Information Bureau, demonstrates the significance given to a simple statement of solicitude by Stalin:

"Comrade Stalin's telegram to the Central Committee of the Communist Party of Italy said: 'The Central Committees of the Communist Party of the Soviet Union (Bolsheviks) is grieved that Comrade Togliatti's friends failed to protect him from this foul and cowardly attack.'

"The reply sent by the Central Committee of the Italian Communist Party to Comrade Stalin is worthy

of this well-tested Party. *In their answer the Italian comrades assure Comrade Stalin that the solidarity of the heroic Soviet people and Stalin's warning about vigilance will be for the Italian Communists 'a spur to strengthen and develop the struggle of the united international front of peace, democracy and socialism.'*

*"All the Communist Parties took Comrade Stalin's message to the Italian Communist Party as the expression of his great solicitude for the international working class movement and its leaders.*

*"Increased struggle against remnants and revivals of fascism, the welding of all supporters of democracy and progress into a single socialist camp will be the best answer of the Communists of all countries to Comrade Stalin's solicitude."* (Pet. Ex. 264, emphasis added.)

To show further that significance is attached by the initiate to these communications, Lautner explains in this light the import of one received by respondent at its 15th Convention in December 1950 from the Communist Party of the Soviet Union (CPSU), which follows:

*"The Central Committee of the Communist Party of the Soviet Union extends fraternal greetings to the 15th Convention of the Communist Party of the U.S.A. We wish the Communist Party of the U.S.A. successes in its struggle against reaction, for the vital interests and rights of the working class and all toilers of the United States of America, for the ideological strengthening of the Party ranks, for lasting peace between the peoples.*

[fol. 2583] *"May the international solidarity of the toilers in the struggle for peace, democracy and Socialism gather strength.*

*"Long live the friendship between the peoples of the United States and of the Soviet Union!*

*"Long live the Communist Party of the United States!*

**"CENTRAL COMMITTEE**

**"Communist Party of the Soviet Union"**

(Pet. Ex. 376, p. 229, emphasis added.)

Lautner, from his experience as a former high official of respondent (until January 1950) and as a student of Marxism-Leninism, establishes that this greeting from the CPSU was a political document of importance to Party members since in a concise way it raised all the key problems confronting respondent. Specifically he interpreted some of the various terms used by the CPSU as follows: "struggle against reaction" as basic Marxist-Leninist opposition to imperialism and monopoly capitalism, i.e., the basic line of the Party; "struggle for peace, democracy and Socialism" as the new tactical approach since the end of World War II on which a new tactical united front is to be built; "ideological strengthening of the Party ranks" as a reference which the Soviet Party used to call the attention of the rank and file Party members to the "Browderite" disaffection and other opportunist deviations.

It is reasonable to conclude that the language used by respondent in its open communications to the Soviet Union is possessed of a content through which respondent reports in rather general terms to the Soviet Union. While they are not sinister messages by secret couriers, in the light of this record they have some significance.

Respondent's witnesses deny categorically that respondent reports or has reported to the Soviet Union or its representatives. The weight of the evidence is to the contrary.

We find that respondent upon occasion reports to the Soviet Union and its representatives.

[fol. 2584]

#### 9. SECRET PRACTICES

Section 13(e)(7) of the Act provides that the Board shall take into consideration:

"the extent to which, for the purpose of concealing foreign direction, domination, or control, or of expediting or promoting its objectives, (i) it [respondent] fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its [respondent's] members refuse to acknowledge member-

ship therein; (iii) it [respondent] fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its [respondent's] meetings are secret; and (v) it [respondent] otherwise operates on a secret basis".

The petition alleges:

"For the purpose of expediting and promoting its objectives and concealing its foreign direction, domination and control, the Communist Party from its inception has adopted a multitude of clandestine practices. While the degree of secrecy has varied from time to time, there has been strict adherence to the practice of secrecy during the period from July 1945, to the filing of this petition."<sup>115</sup>

Respondent acknowledges that it engages in certain clandestine practices, but contends that such activity is not for the purpose of concealing foreign domination and has "nothing whatsoever to do with concealing the views or the program of the Communist Party"; (Amended Answer, p. 3, 18-20; Tr. 12936) and asserts that these practices are in response to repressive measures taken against it and its members and are intended merely to "protect the Constitutional rights of members of the Communist Party." (Tr. 12936.)

Petitioner's evidence clearly preponderates to establish that the Party has employed the practices alleged by the Attorney General and there is no serious dispute in the evidence concerning respondent's adherence to the majority of these practices. The real issue raised by the record here is as to the purposes of these practices, i.e., [fol. 2585] whether they are undertaken to conceal foreign domination or to expedite or promote respondent's objectives, or are simply to protect the Constitutional rights of respondent's members from so-called repressive and unconstitutional measures, and to protect "the lives, the safety and the means of livelihood of . . . members of the Communist Party." (Tr. 12936.)

<sup>115</sup> It then proceeds to allege specific secret practices.

Upon our reconsideration of the record as expunged we find that the evidence preponderates to establish that many of these practices are primarily undertaken for the purpose of promoting respondent's objectives, a statutory consideration (Sec. 13(e)(7)).<sup>116</sup> The evidence showing this will now be discussed.

The Marxist-Leninist Classics and official publications of the Comintern provide that clandestine practices must necessarily be employed by a Communist Party in order to enable it to better achieve its objectives. *Strategy and Tactics of the Proletarian Revolution* (Pet. Ex. 343) exemplifies this by reference to the Russian Revolution and the necessity for the Party there to go underground in accordance with the ebb and flow of the revolution. Lenin, in his work *What Is To Be Done?* (Pet. Ex. 417), which respondent urged its members to read in 1951,<sup>117</sup> makes clear that some secrecy is always necessary and that the degree of secrecy required of the Party depends upon the degree to which it is permitted under the circumstances prevailing in a given country to operate "legally." Lenin teaches that the way to reconcile the requirement for a mass Party yet maintain "that degree of secrecy which is essential for the persistent and continuous struggle against the government" (p. 117) is to maintain within the Party organization a nucleus of "revolutionists" which is "not too extensive and as secret as possible." (P. 106.) Lenin shows that in order to avoid detection by Governmental authorities the revolutionary movement is only properly based upon "a solid foundation of a strong organization of revolutionists." (P. 112.) He discusses the question as to whether an "organization" or "committee" can be caught by the constituted authorities and arrives at the proposition

<sup>116</sup> We do not find, however, that the evidence establishes the practices are undertaken to conceal foreign domination (Sec. 13(e)(7)).

<sup>117</sup> Alexander Trachtenberg, presently a leader of respondent, wrote in the "Editor's Foreword" of this book that it "still retains its freshness because of . . . the great lessons it has today for the workers in capitalist countries who build their revolutionary parties after the pattern fashioned by Lenin during the formative period of the Bolshevik Party." (Pet. Ex. 417.)

that "it is far more difficult to catch ten wise men [professional revolutionists] than it is to catch a hundred fools." (P. 116.) That this basic requirement of secrecy stems [fol. 2586] from the Marxist-Leninist class concept that a "capitalist" government is the class enemy of the proletariat and that the requirement is intended primarily to promote Communist objectives and not to "protect" members of the Communist movement is indicated by Lenin, who explains that the "more secret functions" are best centralized in the hands of "a 'dozen' experienced revolutionists, no less professionally trained than the police." (Pet. Ex. 417, p. 118.)

According to Marxism-Leninism, the degree of secrecy in Communist Party operations is determined by the extent to which a Party may carry on its operations openly or lawfully in a given country. However, Marxism-Leninism requires, even where a Party may operate openly, the creation of a secret, parallel illegal apparatus. For example, a "statute" of the Comintern provided:

"The general state of things in the whole of Europe and of America makes necessary for the communists of the whole world an obligatory formation of illegal communist organizations along with those existing legally. The Executive Committee should take charge of the universal application of this rule." (Pet. Ex. 8, p. 7.)

One of the "conditions" for membership in the Comintern to which respondent openly adhered for two decades clearly explains the purpose of this secret illegal apparatus:

"The class struggle in almost every country of Europe and America is entering the phase of civil war. Under such conditions the Communists can have no confidence in bourgeois laws. They should create everywhere a parallel illegal apparatus, which at the decisive moment should do its duty by the party, and in every way possible assist the revolution. In every country where, in consequence of martial law or of other exceptional laws, the Communists are unable to carry on their work law, fully [sic], a combination of



lawful and unlawful work is absolutely necessary."  
(Pet. Ex. 8, p. 28.)

An instructive example of the emergence of an underground Party at the decisive moment is set out in the *History of the Communist Party of the Soviet Union* (Pet. Ex. 330), used by respondent as a guide to action. It relates that: "After the February Revolution, the organizations of the Bolshevik Party, which had worked illegally under the extremely difficult conditions of tsardom, emerged from underground and began to develop political and or-[fol. 2587] ganization work openly. The membership of the Bolshevik organizations at that time did not exceed 40,000 or 45,000. But these were all staunch revolutionaries, steeled in the struggle." (P. 183.)

Neither in the Classics nor the organizational requirements of the Communist International is there any indication that the requirements for secrecy which both impose is to protect the individual Party members, but, on the contrary, the purposes of these requirements are shown to be to enable the Party, which by its very nature is conspiratorial,<sup>118</sup> to function against the Government. In the *Programme of the Communist International* (Pet. Ex. 125, p. 92) it provided, "The Communist Parties must be prepared for transition to illegal conditions . . ."

Consequently, it is clearly established without material contradiction by documentary evidence that Marxism-Leninism and the organizational requirements of the Comintern require the existence of a secret apparatus even where a Party may operate openly, the purpose being to insure that at the "decisive moment" there will be a secret apparatus which will "in every way possible assist the revolution."

It is against these requirements of a secret as well as an open apparatus that much of the evidence of clandestine practices must be viewed.

<sup>118</sup> See for example Stalin's speeches on the CPUSA (Pet. Ex. 109), published by the Central Committee of the CPUSA in pamphlet form, wherein he speaks of the danger of respondent's losing its "conspirative" protection.

It is conceded by respondent and the evidence establishes that it has maintained both open and secret members, that some portion of its membership was and is concealed. Open members of the CPUSA have been those who, by reason of their Party position or because of the type of their operations, need not be concealed. For the most part these were the national, State and district officials and candidates for public office on the Communist Party ballot. Party members active as labor union leaders, mass organization leaders, members of professions, and others have concealed their Party membership from the general public or from the organizations in which they worked or in which they were members. The degree of concealment of such members varies with respondent's current policy regarding its activities; however, the membership of important civil servants, in the armed forces, teachers, and those individuals engaged in illegal and confidential activities for the CPUSA or the Soviet Union is kept secret and is known only to leading officials of respondent or to a restricted number of other members.

[fol. 2588] As required by Marxism-Leninism and as was required of it as a member of the Comintern, respondent has at all times maintained in the United States an underground or secret apparatus, even though operating on a comparatively open basis. This underground apparatus has been kept in readiness to assume leadership and to direct the functions of the Party during the periods when its leaders determine that underground operations are necessary in order to carry out Party activities. Extensive plans have been devised and great quantities of materials have been gathered in preparation for underground operations. Reserve sums of money have been set aside. Hide-outs and secret storage space have been acquired. Mimeograph and printing equipment and materials have been assembled in secret hiding places. Reserve officials have been designated to perform, if the situation so demands, as leading functionaries of the Party. The membership of respondent in the early 1920's and since the late 1940's has been divided into groups of five or even fewer persons, and confidential mailing addresses, couriers and other secret devices have been employed in connection with the

preparations for underground activities. During periods when respondent's activities have been conducted with greater secrecy, preparations for underground operations have been intensified correspondingly, along with a like increase in the employment of many of the secret practices described later herein.

Respondent went entirely underground for several years in the early 1920's maintaining a secret headquarters, holding secret meetings, and otherwise conducting its affairs on a secret basis. As its "legal" expression, it organized and dominated the Workers Party, an "open" organization consisting of both Party and non-Party members. Pursuant to instructions received from the Communist International, pointing out that the Party could function openly,<sup>119</sup> the underground Party was liquidated as such but the underground apparatus still remained. The "open" Party, or Workers Party, was merged with the underground Party and thereafter adopted the name Communist Party of the United States of America.

On the continuation of this underground apparatus, Lautner shows that J. Peters, a high Party functionary, directed the Party secret apparatus in the United States Government in the 1930's, and in 1935 Peters told Budenz that the underground Party, being the conspiratorial apparatus, was the most important, that it was the real decisive Communist Party.

[fol. 2589] A few years later, after the signing of the Hitler-Stalin Pact in 1939, the Party, being placed in a position of supporting an ally of Hitler, entered a period of strict secrecy which continued until the invasion of the Soviet Union by Germany in June 1941, and it undertook at this time to strengthen its underground apparatus in preparation for going entirely underground. Eugene Dennis, a high Party official, declared at a meeting of Party functionaries during this period that the secret measures then being placed into effect must be completely estab-

<sup>119</sup> Cf. in this connection Party leader Gilbert Green's report to the Plenum on the need for strengthening Communist vigilance, *Political Affairs*, May 1950 (Pet. Ex. 363), wherein he states: "There was a time when Lenin referred to the United States as 'unequalled' in the 'degree of its political freedom.'" (P. 119.)

lished and adhered to so that, if the United States joined Great Britain in the war against Hitler, the Party would be prepared to turn such an "imperialist" war into a civil war, as Lenin advocated.<sup>120</sup>

While prior to the Pact respondent's clubs averaged from 12 to 20 members and branches from 50 to 100 members, after the Pact the clubs were divided into groups of five, the branches broken down, the size of its national, state and section committees was reduced, and the underground group system was readied for functioning. Directives were issued to destroy records and such literature as would identify members with respondent, membership cards were not issued, and some national CPUSA leaders went partially underground. These measures were intended to place the Party on a complete war basis when put into effect. After the attack by Germany on the Soviet Union and the reversal of the Party's anti-interventionist policy, many of these measures were relaxed.

Further showing the existence and operation of a concealed apparatus doing the secret part of respondent's work, Budenz establishes that the World Travel Agency, headed for a time by Jacob Golos, was connected with a Soviet espionage agency during the period 1936-1943, and that Golos acted as the liaison for communication between Elizabeth Bentley, a member of respondent's underground, and the Soviet Secret Police agents operating in this country.

Extensive preparations for taking the Party underground were again commenced in 1948 when respondent's operations came under the scrutiny of the authorities and relations between the United States and Russia became strained. Various measures were again taken by

<sup>120</sup> We have assayed Budenz' testimony on this point and credit it, notwithstanding that cross-examination showed that in a book authored by him he did not mention "civil war" in discussing the incident. That this is respondent's position is shown by numerous other circumstances of record, including that this is an axiom of Marxism-Leninism and has been advocated by the Party, see e.g., fol. 2424, *supra*, and fol. 2605, *infra*. Moreover, Dennis, a party to this conversation, is a leader of respondent, but was not called in rebuttal.

the Party to strengthen its underground apparatus. Respondent's National Committee issued directives, which were carried out, that leaders should refrain from communicating by telephone and from identifying Party members by name, that Communist documents and directives should not be sent through the mails, and that the size of all committees within the Party be reduced. In announcing such a directive, Gus Hall, then Chairman of the Ohio Party, stated that the reduction of the State [fol. 2590] Committee of Ohio from approximately 50-odd members to about 11 members was being effected for "security" purposes. At the same time, the National Committee was reduced in number from about 55 to approximately a dozen members, and later, at the 1950 National Convention, it was fixed at 13 members.

By January 1950 respondent had placed into effect throughout New York State a plan for the integration of about 10 per cent, or about 3,000, of its members into a seven-level, vertical underground operation, known in the Party as "a system of threes" and patterned after the three-system of organization in effect in most of the countries in Europe when Communist Parties there were underground. Thompson, a high Party official who has been convicted under the Smith Act, stated that this organizational setup was intended to function even if the Party as such should be declared illegal. In addition, portions of the New York State Party budgets for 1948 and 1949 were assigned to underground work.

In the summer of 1949 instructions were given and steps were taken by respondent's leaders to establish a national system of radio communication which involved the acquisition of radio receivers, familiarization with the use of radio equipment, plans for the location of mobile transmitters and receiving equipment, and a search to find amateur radio operators among CPUSA members. Party leaders sought to establish this system in such a manner as to avoid detection by the Federal Communications Commission of illegal transmissions.

Since about 1948 and continuing on into early 1952, a large number of Party members, including witnesses for petitioner in this proceeding, have been severed from regu-



lar Party units and were either transferred to underground operations, in order to assist in underground planning and to receive instructions in underground activities, or placed in a reserve leadership status.

Beginning around 1948 the CPUSA divided its basic clubs throughout the United States, including those of professional people, into groups of about five members, increased precautions were taken to conceal the meetings of the professional groups, and members were instructed that they should not communicate with others outside their own particular group. Membership cards were no longer issued and names of members were not to be mentioned at group meetings, and communication between the groups and other CPUSA units were to be made through group captains directly to section leaders.

Since this time stringent concealment measures have also accompanied the conventions held by respondent and only the most trusted members of the Party have been permitted to attend, and Party names and aliases have been used in place of given names.

[fol. 2591] During this period the payment of dues and other contributions to the Party has been recorded by the use of a system whereby the members are designated by number at the club level. Also, numbers and symbols have been used by the Party in order to identify its members on mailing lists. As was done during the period of the Hitler-Stalin Pact, extraordinary precautions were taken to conceal the existence of Party schools and the names of the trusted Party members selected to attend them. The nature of the curriculum of these schools (see section "Training and Reporting" *supra*) clearly shows the illegal purpose behind the extensive measures adopted to conceal their existence. Students at a Party school in Oakland, California, during the period 1949-1950 were enrolled by numbers instead of by names, and students at the former were directed to refer to each other by their enrollment numbers rather than by their correct or Party names. The record shows that this group system continued to function after 1950 under strict concealment measures which have been employed by respondent.



In addition to these steps, respondent also adopted during these periods the practice of keeping no records which would divulge information concerning its members and activities. In situations where it was necessary to keep records, however, secret devices such as charts and code systems have been used. (Pet. Ex. 353.) Records have been kept at a minimum by such varied practices as engaging in cash financial transactions, issuing oral directives without ever reducing them to writing, and requiring club leaders of respondent to memorize the names of members of their respective clubs. [REDACTED] records as have been kept are maintained secretly, and carefully concealed in homes and business offices of secret or concealed members of the Party or of other persons who would be least suspected of being identified with the CPUSA.

That these measures are to prevent disruption of the "world Communist movement" is further evidenced by Party leader Gilbert Green's "Report to the [Party] Plenum on the Need for Strengthening Communist Vigilance," as published in *Political Affairs* of May 1950. (Pet. Ex. 363, pp. 115-116.) It provides:

"Our whole Party has not yet drawn the full lessons from the experience at the Foley Square trial, from certain incidents since the trial, particularly from the valuable experience of the world Communist movement in the past few years. These prove, beyond a doubt, that the ruling class of this country is assiduously cultivating every known stoolpigeon and agent-provocateur method of the past, and adding a few new ones, in its attempt to infiltrate and disrupt the world Communist movement from within."

[Vol. 2592] As "The Immediate Tasks" Green emphasizes the need for "Leninist methods," stating:

"We must put an end to all opportunist carelessness arising from an underestimation of the duplicity of the enemy. This includes where and how we hold meetings, the use of telephones, etc. We must understand that slothful, careless methods are the opposite of the Leninist methods." (Pet. Ex. 363, p. 129.)

In addition to the foregoing, it is also established that respondent has throughout its history sent its members into various organizations in the United States for the purpose of gaining control of such organizations and influencing their policies to support Party policies and programs. Pursuant to respondent's directives, its members have pursued this infiltration policy with respect to professional organizations, cultural organizations, and trade and industrial unions.<sup>121</sup> Secret Communist factions were planned or formed in such organizations for the ultimate purpose of obtaining control and making the policies of the organization subservient to those of respondent. Students at respondent's schools were taught the importance of infiltrating mass organizations as a means of acquiring mass support for the Party program. Party members designated to carry out infiltration work in mass organizations were instructed to use care not to expose the Party in these organizations.

Continued adherence to this practice is shown by evidence establishing that at a California regional Party convention held in January 1951 the need for Party members to infiltrate other organizations through which the purposes of the Party could be carried out was emphasized.

In connection with this policy, as well as with its other underground operations, Party members were instructed to and did conceal their membership from the organizations involved. Most notable is the Party's activity among trade unions, heretofore shown to be for the purpose of promoting the Party's ultimate objectives in the United States. That this is basic can be seen from a book by Lenin entitled *What Is To Be Done?*, which respondent's members read and studied. In this book Lenin declares that trade unions are "a very useful auxiliary to the political, agitational and revolutionary organisations" and that they can be controlled by a "small, compact core" of agents "connected by all the rules of strict secrecy with the organisations of revolutionists." (Pet. Ex. 417, pp. 109-112.)

There are numerous instances of record where, early in the Party's history, its attempts to secretly infiltrate unions were discussed at Politburo meetings, as reflected in offi-

<sup>121</sup> See sub-section "Trade Unions," *supra*, for more details concerning unions.

cial minutes received in evidence. At such meetings it was [fol. 2593] decided respondent's members were to be instructed to falsely deny they were Party members in order to avoid expulsion from the unions or, if this was impossible because their membership could be established or was known, they were instructed to take the false position that they had withdrawn from the Party.

Jack Stachel, a CPUSA National Committee member, instructed witness Honig in the 1930's to testify falsely in an injunction suit brought against the Shoe and Leather Industrial Union concerning the issue of whether this union was Communist-controlled, and he did so.

More recently, in order to circumvent the non-Communist affidavit provisions of the Taft-Hartley Act, CPUSA members holding positions in labor unions were instructed by respondent's officials to "resign" formally from the CPUSA, but nevertheless to continue functioning as Party members. In this connection, Gus Hall, a CPUSA official thereafter convicted under the provisions of the Smith Act, in 1948 instructed petitioner's witness Blanc, then a union official, to sign a letter of resignation back-dated to a time prior to the effective date of the Taft-Hartley Act in order to protect him from prosecution under the provisions of that Act, and Blanc did so.

It is clear that these measures were undertaken by respondent for the express purpose of effectuating its trade union policies and not to protect its members.

Allied to this policy, the Party has constantly refused and instructed its members to refuse to reveal information and to swear falsely if necessary to advance the Party's interest. The Party's Politburo minutes for June 1926 show that when asked for instructions as to how a Party member involved in an action to revoke his citizenship on the grounds he was a Communist should answer questions, the Party's highest committee gave a number of instructions of the following tenor: "if it cannot be proven that he is a member of the Party, he shall deny membership in the Party." (Pet. Ex. 72, p. 1.) The *Daily Worker* for February 17, 1930, summarizes this policy as follows:

"... It is the duty of Communists to throw every possible obstacle in the way of conviction of their fellow

Party members in the courts, to defend these members by all possible means, and absolutely to refuse to give testimony for the State in any form. Testimony of Communists can only be given for the defense of Communists, not for the state, and then it must be based upon uncompromising defense of the Party and its program . . ." (Pet. Ex. 496.)

[fol. 2594] CPUSA members were taught in respondent's schools and at meetings during the late 1930's and early 1940's that the moral basis of all acts by a Communist is the determination of whether such acts do or do not help in the achievement of the victory of the classless society; that no oath, or statement in court, or consideration of any kind can take precedence over the question of whether or not his act helps or harms the CPUSA.

The record is replete with instances of where respondent's members have been instructed to swear falsely in order to advance the Party's interest. Witness Kornfeder, upon Party instructions, swore falsely in obtaining a passport in 1927 to conceal his going to the Soviet Union. A Party member, in early 1948, falsely denied his membership in the Party before a court in Virginia and subsequently at a Party meeting in Washington, D. C., his resignation from respondent was so dated as to document his false testimony.

Another exemplification of this policy, clearly unrelated to protection of respondent's members, is the filing by respondent of false documents with the Department of State, some signed by petitioner's witness Budenz, then a Party official, to the effect that the Intercontinent News Agency was an independent agent, when, in fact, it was formed by respondent for the purpose of circumventing the Foreign Agents Registration Act of 1938. The record discloses a number of other instances wherein CPUSA members, several of whom testified for petitioner in this proceeding, were instructed while members to deny their Party membership in the courts and to Government agencies, e.g., to the Federal Bureau of Investigation, in connection with the Loyalty Program of the Federal Government.

It is reasonable to conclude on the basis of this record that the basic underlying origin of the afore-discussed practices stems from respondent's adherence to Marxism-Leninism and the concept of a constant class struggle against the state and Government as the embodiment of the class enemy and that the primary purpose of these practices is to aid in promoting the Party's objectives in this struggle and not simply to protect or to shield its members.

Another pertinent characteristic of respondent's operation, which it is reasonable on this record to find, serves a dual purpose, namely, of protecting Party members and also of promoting Party objectives, is the use by its members of Party names or aliases. As stated elsewhere in this Report, Comintern representatives operating in the United States were known by a number of aliases, e.g., Eisler was known as Edwards and Berger, and Gussev was also known as P. Green. By direction of respondent, Party names or aliases were used by its members in 1927 and 1934 on American passports, which had been obtained illegally in order to conceal from the United States Governmental agencies the knowledge that trips were being, [fol. 2595] or had been, made to the Soviet Union. CPUSA leaders have at other times, for the same reason, used false names in connection with their trips to the Soviet Union, as have respondent's students en route to the Lenin School at Moscow. Also, respondent's leaders and members, acting on instructions, have used Party names or aliases to conceal their activities on behalf of the CPUSA in labor circles and in other organizations, as well as in the conduct of strikes and labor disputes. Concealment of Party membership from law enforcement agencies, by the use of Party names, has been practiced by respondent's members throughout the existence of the Party, and false or Party names have been permitted by respondent for use on membership cards.

Turning now to another aspect of clandestine practices engaged in by respondent, the record shows that early in its history Party leaders received training in the secret department of the Communist International in the use of codes for the transmittal of Party messages, as well as



training in the operation of short wave communication. As a result of raids by the authorities in Great Britain during 1927, which revealed the identity of certain Party leaders in the United States who had received confidential letters, reports, cables and sums of money from the Soviet Union, new codes for respondent's use were delivered in Moscow by a Comintern official to a CPUSA official who in turn brought them into the United States.

During the 1930's respondent established and used various code systems in transmitting confidential messages between its units and its leaders in the United States. Instructions were received by respondent in code from the Comintern in connection with the 1934 general strike in San Francisco. Prearranged code words or phrases have been used by CPUSA members in communicating with each other, particularly with respect to underground activities since 1947. A telephone code was devised in 1949 and used through 1950 to transmit information about meetings and other Party affairs in California. Extensive use has been made of confidential mailing addresses by the CPUSA and its members through 1949.

In addition to code communication, couriers have been used extensively by respondent as a concealment measure in the transmission of documents and other material over a period of many years. Until 1940, CPUSA members served as couriers for the transmission of documents between the United States and the Soviet Union and also on behalf of the Communist International in Moscow, transferring funds and documents between the Soviet Union and other foreign countries. Communist International representatives to the CPUSA have acted as couriers in exchanging documents between the United States and the Soviet Union.

In February 1952, petitioner's witness Evans, then a Party member, was told by a Party official that he was to receive instructions as to the performance of the Party's underground activities; and, further, that he would act largely as a courier between certain Party units.

[fol. 2596] The use of codes and couriers is not related to the protection of Party members' Constitutional rights, but is shown in the context of this record to be a device



utilized to insure the proper functioning of respondent as a conspiratorial organization.

A decisive clause in the preamble to the CPUSA constitution of 1942, viz., "by the establishment of socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin, and Stalin, embodied in the Communist International" (Pet. Ex. 328, pp. 5-6) was taught in Party schools as equivalent to the statement, "in accordance with the principles of Marxism-Leninism," (Tr. 5763) as defined hereinbefore. Notwithstanding any other language to be found in the preamble, this clause controls the interpretation which CPUSA members place upon the constitution. Similarly, statements in the preambles of the 1945 and 1948 constitutions of the CPUSA to the effect that respondent's functions are founded "upon the principles of scientific socialism, Marxism-Leninism" (Pet. Ex. 329, p. 3) cannot be reconciled with subsequent statements extolling the support of the Constitution of the United States. These direct and implied references to Marxism-Leninism control the interpretation which Communists must place upon the subject matter found in the Party constitution and are intended to negate any other matter contained therein which may be conflicting in any manner. Marxism-Leninism and adherence to its principles is discussed fully elsewhere in this Report and as shown adherence to and implementation of its principles is inconsistent with attachment to the Constitution and primary allegiance to the Government.

Respondent seeks to explain the concealment practices as they pertain to its members as a defensive device to protect them from un-Constitutional interference by Government authorities and from public harassment. However, when viewing these factors with the other evidence set out herein concerning the Party's underground plans and operations, its policy to have its members swear falsely and to refuse to disclose membership in their trade union activities both prior and subsequent to the requirements of the Taft-Hartley Act non-Communist affidavit, and the evidence of the Party's many years of open affiliation with the Comintern, its adherence to Marxism-Leninism, its advocacy of force and violence to unseat the Government and

the evidence of allegiance to the Soviet Union owed by its members, set out *in/ra*, it seems patent that these secret practices are not adopted by respondent for the purpose which it asserts. This conclusion is overwhelmingly supported when the secret practices are examined in the light of the whole record and all the surrounding circumstances under which they were and are performed. As has been shown, the underlying philosophy of the Communist movement is contained in the doctrine of Marxism-Leninism, [fol. 2597] the real nature of which is described in other portions of these findings. Explicit therein are secrecy and concealment to effectuate attainment of its objectives. It is the aim of respondent to bring about the dictatorship of the proletariat by violent means if necessary and to help the Soviet Union in the event of a war between that country and the United States.

It is basic in the *Theses and Statutes of the Third (Communist) International* that both open and secret nuclei be formed to carry on the work of propaganda and education under the control and discipline of the Central Committee of the Party; and that members were required to join in unlawful work and unlawful organizations if necessary for the Party's purposes. In addition, the conspiratorial nature of the Party as an instrument to lead the struggle against the "class enemy" must be taken into account, as exemplified by Stalin's statement<sup>122</sup> that the 1929 factional dispute in respondent robbed the Party "of its *conspirative* protection in the face of the class enemy." (Pet. Ex. 109, p. 29, emphasis added.) There is also, as shown, evidence which establishes that during the Hitler-Stalin Pact period<sup>123</sup> when it was not unlikely that the United States would enter the war on the side of England and thus be arrayed against Germany and its ally the Soviet Union, "the whole organization was on a conspiratorial basis"

<sup>122</sup> *Stalin's Speeches on the American Communist Party* (May 1929) (Pet. Ex. 109).

<sup>123</sup> The international situation during this period and the Soviet Union's and respondent's policies with respect thereto, which were generally in bitter opposition to the United States policy, are set out in the section "Nondeviation," *supra*.

(Tr. 5548) and the schools were conducted "in accordance with the rules of conspiracy." (Tr. 5549.) In the late 1940's many secret practices were again instituted by respondent and in July 1950 its members were told that the world situation caused the Party to adopt stricter "security" measures.

Secrecy and concealment in connection with the maintenance of an underground apparatus have been continuous and have not been limited to the period when respondent felt it was under particular stress from public resentment or Governmental authority. However, these factors doubtlessly have caused a fluctuation in the degree of some of the secret practices discussed above.

We do not accept respondent's contention that such practices are solely devices utilized to protect the rights and liberties of its members. While the practices doubtless have a dual effect, which envelops seeking anonymity for [fol. 2598] the membership outside the Party, we conclude that secret practices are undertaken by respondent primarily for the purpose of concealing its true nature and of promoting its objectives.

Upon the basis of the foregoing and on the whole record, we find that respondent engages in extensive secret practices within the meaning of the Act, for the primary purpose of promoting its objectives and thereby to advance those of the world Communist movement.

[fol. 2599] 10. ALLEGIANCE

Section 13(e) (8) of the Act requires that the Board consider:

"the extent to which its (respondent's) principal leaders or a substantial number of its members consider the allegiance they owe to the United States as subordinate to their obligations to such foreign government or foreign organization."

As we have heretofore discussed, the evidence shows that a basic aim of Marxism-Leninism is the establishment of dictatorships of the proletariat in all non-socialist countries of the world, and that respondent adheres to and

works to attain this goal in the United States. The Marxist-Leninist "Classics" define dictatorship of the proletariat and demonstrate that it must if necessary be established by the forceful overthrow of existing non-socialist governments. (See Pet. Ex. 138, pp. 20-21, 26-27, and Pet. Ex. 121, p. 55.)

Although we have heretofore set forth in other sections of this Report our findings that respondent's adherence to Marxism-Leninism has implicit in it acceptance of its fundamentals, it is desirable, because of the principles and policies of the "Classics" concerning allegiance to the Soviet Union, and particularly the necessity for the overthrow of existing "imperialist" governments, including, *inter alia*, the United States, to summarize here, by way of review, some of the evidence establishing respondent's present adherence to the "Classics."

In 1945, when respondent reverted to the name Communist Party of the United States of America the "Classics" assumed an even greater importance. The "Classics," including the *Communist Manifesto*, were in use by the Party up to and including the year 1950. Marxism-Leninism, as embodied in the "Classics," provided the basis of what petitioner's witness Lautner taught and was taught at respondent's National Training School. The "Classics" were used in the Marxist-Leninist Institute in Los Angeles which Petitioner's witness Evans attended until it was discontinued in June 1950, and they have been used in study courses during the years 1945-1950; in teaching respondent's members.

A recent article by Alexander Bittelman, a CPUSA leader, states:

"A theoretical contribution of Stalin which, like the *Foundations of Leninism and his other theoretical works*, ranks with the fundamental theoretical and philosophical works of Marx, Engels, and Lenin, is the *History of the Communist Party of the Soviet Union*. The *History* is a fountainhead of Marxist-Leninist [fol. 2600] knowledge—theory, ideology, strategy, tactics, principles of organization. It is a guide to Marxist-Leninist action. It embodies the theoretical and

programmatic positions of Marxism-Leninism." (*Political Affairs*, December 1949, Pet. Ex. 373, p. 8, emphasis added.)

The same highly placed author, in January 1952, states:

"Lenin's teachings are triumphing because they are true. The teachings of Lenin, further developed by Stalin, demonstrate their creativeness and cogency in all the great progressive struggles of our day and epoch. Lenin's teachings inspire the actions of the vanguard fighters for peace and democracy. Peoples fighting for equal rights and national independence find their advance fighters and leaders guided by the teachings of Lenin, so brilliantly continued and further developed by Stalin. And the magnificent historic fight of our epoch—the fight for socialism, for Communism . . . we are proud to say, is guided by the teachings of Lenin and of his great continuer Stalin. It is led by parties of Marxism-Leninism, by Communist and Workers Parties." (*Political Affairs*, Pet. Ex. 489, p. 1.)

In addition to the documentary evidence, it was established through the testimony of petitioner's witnesses Gitlow, Kornfeder, Nowell, Janowitz, Honig, Evans, Meyer, Hidalgo, and Budenz, among others, that the CPUSA in reality advocates the overthrow of the Government of the United States by force and violence if necessary. The membership of the above witnesses in the CPUSA spanned the entire existence of the Party until February 1952. Their various positions therein ranged from high offices to rank and file Party membership. All were in a position to know whereof they spoke.

Respondent engaged in extensive cross-examination of these witnesses on their testimony concerning force and violence and also examined its own witnesses at some length on this subject, thus joining issue thereon.<sup>124</sup>

<sup>124</sup> Respondent at oral argument contended that witness Honig's testimony was to the effect that the Party advocated peaceful transition to socialism and not overthrow of the Government by

[fol. 2601] In essence, respondent's witnesses testified that the CPUSA does not seek to overthrow the Government of the United States by forcible means, but rather it seeks to establish its program by peaceful means within the framework of the United States Constitution; that "force and violence" as referred to by respondent comes into play only in the event that a duly elected "socialist" government is subject to "counter revolutionary" force by the unseated capitalist-monopolists; it then advocates meeting such an attempt by force to maintain the "socialist" government. Respondent points to language in its 1945 and 1948 constitutions (Pet. Ex. 329, and Pet. Ex. 374, respectively) which embraces the United States Constitution. On the other hand, petitioner's witnesses establish that the "principles of scientific socialism," of "Marxism-Leninism," as used in respondent's constitution and other writings, have a definite meaning to CPUSA members,<sup>125</sup> i.e., that the basic goal of respondent, founded on the writings of Marx, Engels, Lenin and Stalin, namely, the establishment of the dictatorship of the proletariat, can be attained only by the violent shattering of the "bourgeois" state, and this includes the Government of the United States.

It has been concluded that such language in these constitutions of respondent, and other similar statements embracing the Bill of Rights and the United States Constitution, are irreconcilable with Marxist-Leninist principles, and are devices to clothe a conspiracy against the United States Government in the habiliments of legality. The testimony of respondent's witnesses, to the contrary as set forth above, is rejected as being irreconcilable with the great weight of the evidence.

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force and violence. On reweighing Honig's testimony on this point, we have taken fully into account the cross-examination and because his clear and unequivocal direct testimony as set out at Tr. 4495 is consistent with a great mass of documentary and testimonial evidence of record and is in the light of this record substantially unimpaired by cross-examination, we credit it. Accordingly, we find no basis for respondent's contention that Honig testified to peaceful advocacy by the Party. His testimony is to the contrary.

<sup>125</sup> See section "Marxism-Leninism," *supra*.



The testimony of petitioner's witnesses also preponderates to establish that, pursuant to the preachments of the "Classics," the CPUSA seeks to overthrow the existing Government in the United States and its institutions, by forcible means, if necessary, and to establish a dictatorship of the proletariat in proceeding to establish "socialism."

The evidence in this proceeding discloses, and we officially notice, that most of respondent's foremost leaders, despite contentions like those made by respondent in this proceeding, have been convicted under the clauses of the Smith Act (18 U.S.C. § 11, 13, and 37) variously of conspiring to organize as the Communist Party a society group and assembly of persons who teach and advocate the overthrow and destruction of the Government by force and [fol. 2602] violence, and to use leadership therein with the intent to accomplish the overthrow and destruction of the Government of the United States.<sup>126</sup>

Respondent's adherence to and implementation of a concept requiring the overthrow of the United States Government by any means, including force and violence, is completely incompatible with, and the exact antithesis of, allegiance to the United States. This becomes even more clear when we weigh this evidence along with that concerning the international aspects of Marxism-Leninism from which this concept flows, as set forth *supra* in sections "Marxism-Leninism" and "World Communist Movement."

<sup>126</sup> Leaders of respondent involved in this record so convicted include: Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, Gus Hall, Philip Frankfeld, Leroy H. Wood, Elizabeth G. Flynn, Pettis Perry, Alexander Bittelman, Victor J. Jerome, Louis Weinstock, Arnold S. Johnson, Albert F. Lannon, Betty Gannett, Jacob Mindel, William W. Weinstone, and Claudia Jones. ~~Alexander Trachtenberg, George B. Charney, Sidney Steinberg (Stein), James Jackson, William Schneiderman, Dorothy R. Healey, Rose C. Kunitz, and Frank Carlson.~~ See *U.S. v. Dennis, et al.*, 341 U.S. 494; *U.S. v. Frankfeld, et al.*, 198 F. 2d 629, cert. den. 344 U.S. 922; *U.S. v. Flynn, et al.*, 216 F. 2d 354, cert. den. 348 U.S. 909. ~~*U.S. v. Trachtenberg, et al.*, C-1367 pending on appeal U.S.C.C.A. Second Circuit; *Yates v. U.S.*, 357 F. 2d 146, now pending on writ of certiorari.~~

The Soviet Union being the fatherland or home base of the world revolution, the leaders of the Soviet Union serve also as leaders of the organized world Communist movement. In this capacity the Communist International, the Soviet Union, and Stalin were given pledges of allegiance by respondent's leaders and members, as shown by the evidence we now set forth.

Nowell testified for petitioner in this proceeding as a former CPUSA official who took an oath upon joining the CPUSA (in 1929) to carry out the Party line and to adhere to the principles of the Comintern at all times.

A pledge read by Earl Browder to 2,000 Party initiates in New York in 1935 stated:

"I pledge myself to rally the masses to defend the Soviet Union, the land of victorious socialism. I pledge myself to remain at all times a vigilant and firm defender of the Leninist line of the Party, the only line that insures the triumph of Soviet Power in the United States." (Pet. Ex. 145, p. 105.)

[fol. 2603] In Madison Square Garden, New York City, in 1937, about 3,000 new recruits to the Party pledged, among other things, to uphold and advance the program of the Communist Party, as well as their "complete devotion to the Leninist struggle for socialism—for a Soviet America." (Pet. Ex. 382.)

At the Seventh World Congress of the Communist International in Moscow in 1935, delegates from the CPUSA, including some of the present leaders of the Party, took an oath of fealty "to Comrade Stalin, leader, teacher, and friend of the proletariat and oppressed of the whole world" whom they assured that "the Communists will always and everywhere be faithful to the end and to the great and invincible banner of Marx, Engels, Lenin, and Stalin" and that "under this banner, Communism will triumph throughout the world." (Pet. Ex. 430.)

The delegation of respondent to this Congress approved this oath of fealty to Stalin and two of the delegates, Browder and Foster, were elected to the Presidium of the Executive Committee of the Communist International. Subsequently, the decisions of the Seventh Congress of the

Communist International and the work of the CPUSA delegation at that Congress were fully approved by respondent. After this 1935 Congress of the Communist International all Communist leaders and functionaries had to take a basic pledge or oath of loyalty to Stalin.

Of the nine members of the delegation to the Seventh World Congress of the Communist International who took and approved this oath to "Comrade Stalin," six, namely, William Z. Foster (National Chairman), John Williamson (Labor Secretary), Gilbert Green, Jack Stachel, William Schneiderman, and Martha Stone, are top leaders of the CPUSA, having been elected at its 15th National Convention in December 1950 as members or alternates of its National Committee.

Further evidencing respondent's allegiance to the Soviet Union is the reprinting in its official organ *The Communist* in June 1937 (Pet. Ex. 380-D) of Comintern leader Georgi Dimitroff's statement that:

"... One cannot be a Socialist or even an honest democrat if one is not resolutely and entirely on the side of the Soviet Union, the great land of socialism and real democracy for the whole of the people.

[fol. 2604] "The attitude toward the Soviet Union is in essence the touchstone testing the devotion of every individual active in the working class movement, and of every working class organization to the interest of the working class, and their loyalty to socialism." (Pet. Ex. 380-D, p. 512.)

Party leader Foster, as the principal speaker at respondent's 1948 Ohio State Convention, stated that the Party in Ohio should elect as leaders only those individuals upon whom they could depend in the event of a war between the Soviet Union and the United States.

In 1949 respondent published a message to Stalin in which the Party accused the United States Government of violating the commitments made at Yalta and at Potsdam and referred to the existing Government as "American imperialists." Petitioner's witness Lautner establishes that this message, in effect, constituted a reaffirmation by

the CPUSA of its loyalty and a further acknowledgment of Stalin's leadership of the world-wide Communist movement:

Twelve of the thirteen members of the National Committee of the CPUSA, who were elected at the 15th National Convention of the Party held in December 1950, and two of the alternates have been convicted under the Smith Act as heretofore noted. Three of those convicted, namely, Williamson, Green, and Stachel, were among those leaders of respondent who took an oath of fealty to Stalin at the Comintern's Seventh World Congress in Moscow in 1935. The record does not disclose that any of these CPUSA leaders have ever repudiated the oaths, or that respondent has repudiated their action.

That the allegiance owed the United States is subordinated to a loyalty to the Soviet Union by respondent's leaders and a substantial portion of its membership is further borne out by the evidence showing numerous instances in the past where respondent and its leaders have urged its members to defend the Soviet Union, even in the event of a war between that country and the United States of America. The slogan "Defend the Soviet Union" has been used in this regard. (See e.g., Pet. Exs. 132, 133, 135, 136, 137, 143, 144, 145, 149, 159, 160; 343, 380-A.B.C.)

Respondent's students at the Lenin School in Moscow in the period between 1927 and 1937 were taught that the role of the CPUSA, in the event of war between the Soviet Union and the United States, is to support and defend the former and to labor for the defeat of the latter:

Early in its history, the CPUSA regarded as one of its purposes or duties the defense of the Soviet Union as the fatherland of the working classes all over the world. All new members of respondent were instructed, between 1927 and 1939, that the first and only allegiance of a Party [fol. 2605] member is to the workers' fatherland, namely, the Soviet Union, and not to any capitalist government. The Red Flag of the Soviet Union was used at Party functions during the early 1930's to signify the fatherland of the working class. During this period, Party leader Alexander Bittelman, in *The Communist Party in Action*, pro-

claimed: "Our Party is the United States Section of . . . a world Communist Party and each one of us is therefore a member of a world Party." (Pet. Ex. 144, p. 33.)

In December of 1929, when the United States was suffering severe economic upheavals, the Party launched a "Lenin campaign" and its Central Committee instructed in connection therewith that:

"Civil war is socially progressive and necessary . . . we must prepare the American working class for the coming civil war against American capitalism." (Pet. Ex. 108, p. 4.)

Concerning defense of one's own country, the Party's Central Committee taught its members that:

"The proletariat, unless it captures political power, has no country to defend. To us the bourgeois theory of offensive and defensive wars is of little value . . . If Haiti and China attack American imperialism, we would absolutely justify this war . . . even if the Haitian and Chinese workers were the first ones to attack . . . The question for us to consider is: who attacks whom, and not who attacks first. \* \* \* This Marxist-Leninist axiom, therefore, tells us that the first attitude of the American proletariat in case of an imperialist war is to turn this war into a civil war against their own bourgeoisie. The American Party must widely popularize this policy and advocate it in our every day struggles against capitalism and imperialist wars. \* \* \*

A revolutionary class in a reactionary war cannot but wish the defeat of its own government. This is an axiom." (Pet. Ex. 108, pp. 4-5.)

The Central Committee listed as one of the Party's "Tasks" during this critical period, "To popularize the slogan of civil war against American capitalism." (*Ibid.*, p. 6.)

In 1935, Dimitri Z. Manuilsky, then head of the Comintern, told respondent's delegates to its Seventh World Congress that the first allegiance of all CPUSA members was

to the Soviet Union, and he demanded that the subject of [fol. 2606] allegiance again be stressed throughout the lower ranks of respondent. Students in Party schools during the 1930's and early 1940's were taught that the first and only allegiance of a Party member is to the Soviet Union, the fatherland, rather than to the United States.

Students at the Party's Midwest Training School in Chicago were taught in 1945 that Communists owe their allegiance to the Soviet Union. Party members were taught at respondent's meetings in 1948 that they owe allegiance to the "democratic forces" of the world and that the Soviet Union represents such forces.

Petitioner's witness Lautner learned from his varied experience in the Party from 1929 to 1950 that "the primary allegiance" (Tr. 9622) of a CPUSA member lies in the defense of the Soviet Union. A CPUSA leader in November 1950 denounced the United States for inciting war against the Soviet Union. He urged Party members to respond to "imperialist slanders and war incitements" by an "ideological and political offensive in the defense of the Soviet Union as the leader of the world camp of peace, democracy and Socialism," as well as "to support and defend the peace policy of the Soviet Union." (Pet. Ex. 477.)

This evidence takes on clearer meaning when it is viewed against the Marxist-Leninist concept of "imperialism," its corollary "just and unjust wars," the concept of two hostile world camps, and respondent's policies in implementation thereof, as heretofore discussed.<sup>127</sup> The preponderance of the evidence establishes that in applying this basic concept it was taught at the Lenin School in Moscow and by respondent at its schools and meetings during its entire existence that a "just" war is any war in which the Soviet Union has as an adversary an imperialist power, regardless of whether the Soviet Union is the aggressor or the defender. Conversely, any war against the Soviet Union, regardless

<sup>127</sup> See pertinent findings in sections "Marxism-Leninism," "World Communist Movement" and "Anti-imperialism," *supra*, which we also take into account in applying the allegiance criterion.



of which nation might be the aggressor, is an "unjust" war for the Soviet Union's adversary. In the event of war between two capitalist countries, the Communist role is to work for the destruction of both, thus leaving to the Soviet Union a clear path for future conquest.<sup>128</sup> In the event of war between the Soviet Union and the United States, however, CPUSA members are to work for the defeat of the United States.

[fol. 2607] The CPUSA, adhering to the principles of Marxism-Leninism, has consistently characterized the United States as an "imperialist" and a "capitalist" nation which by definition can participate only in "unjust" wars.<sup>129</sup> Any war among capitalist countries or by a capitalist nation against a "socialist" country, such as the Soviet Union, is considered by respondent to be an "unjust" war. However, the Soviet Union or any other "socialist" countries are upheld as "anti-imperialist" nations which cannot possibly start an "unjust" war; any war participated in by "socialist" nations is considered by respondent to be a "just" war from the standpoint of such nations. Students at Party schools in 1949 and 1950 have been taught that the Soviet Union could at no time start an "unjust" war while the United States could start an "unjust" war but never a "just" one; further, that a good Communist must support a nation engaging in a "just" war and oppose an "unjust" war. Pursuant to these concepts, the CPUSA took the position that the Korean War was an "unjust" war which the United States and her allies were waging as aggressors against the North Korean and Chinese peoples.<sup>130</sup>

From the evidence contained in this record, we find that respondent has as a fundamental purpose, which it constantly seeks to further, the overthrow of the Government

<sup>128</sup> It has pertinence to advert here to the history of the Hitler-Stalin Pact as related in our findings herein under "Nondeviation," *supra*.

<sup>129</sup> Unless, of course, the United States is allied with a "socialist" country such as in World War II.

<sup>130</sup> See sections "World Communist Movement" and "Nondeviation," *supra*.

of the United States by any means, including force and violence if necessary, in order to install "socialism" under a dictatorship of the proletariat, after the manner of the Soviet Union, and that this is the very antithesis of allegiance to the United States.

We find upon the whole record that the evidence preponderantly establishes that respondent's leaders and a substantial portion of its membership consider the allegiance they owe to the United States as subordinate to their loyalty and obligations to the Soviet Union.

[fol. 2608]

#### SUMMARY

The evidence in this proceeding traces the entire existence of the Communist Party of the United States, a period of more than 30 years. It has been a satellite of the Soviet Union from its inception.

At the outset of its existence it joined the Communist International, an instrumentality of the Soviet Union, and the organizational manifestation of the world Communist movement at the time. In joining the International the Party agreed to accept its direction and to adopt the policies enunciated by it.

The Communist International was avowedly Marxism-Leninism in action. The period of about two decades when the Party was formally a member is traced in the record by official documents of the International and respondent and oral testimony. This evidence shows unequivocally the character, objectives and leadership of the world movement and the Party's role therein. That respondent during this period was dominated and controlled by the Soviet Union, which controlled the world Communist movement<sup>131</sup> and operated primarily to advance the objectives of that movement is not seriously disputed by respondent's evidence. Indeed, incontrovertible documents virtually preclude such a showing.

Until 1940, then, respondent was openly an active participant in a Soviet led international movement with a "programme of struggle for the world proletarian dicta-

<sup>131</sup> And we find in this Report that this world movement is substantially as described in section 2 of the Act.

torship." Cutting through the semantics, a proletarian dictatorship is what exists in the Soviet Union.

The only substantial issue of fact is whether upon the announcement in 1940 of its disaffiliation from the Communist International, the latter's dissolution in 1943, or thereafter, respondent ceased its relationship with the Soviet Union or the world Communist movement. The evidence shows the disaffiliation was merely *pro forma* and did not sever the relationship. In fact, the Party did not so much as assert a cleavage in policy or program with the Soviet Union or the world movement. While the Communist International was disbanded, as such, in 1943 once again this was only a *pro forma* maneuver. The world movement remained intact in theory and program. And, here again, there was no renouncement of program or purpose. Both as to the disaffiliation and the dissolution, to have substantial significance here there would have to be an indication of some repudiation of policy and program. But there is none.

[fol. 2609]. More than this, however, the evidence shows affirmatively that the program of the world movement and respondent have continued to be the program promulgated by the Communist International. In fact, the reorganization of the Party in 1945 occurred because of a revulsion against a temporary departure from the world Communist program in the waning years of World War II. The reorganization was accompanied by a dynamic reaffirmation of Marxism-Leninism. It would seem clear that, the world Communist movement being Marxism-Leninism in action, there would be no substantive break from the movement without a substantial departure from or revision of Marxism-Leninism by respondent. This there has not been. Its policies and programs were originally laid down for respondent by the Soviet Union, through the Communist International. These programs respondent has effectuated without discernible variance to the time of this hearing. Leaving aside the denials of its witnesses that the alleged relationship with the Soviet Union and the world movement exists, it is striking that it is unable to point to events in the various periods of its history demonstrating its independence and bona fide domestic character. Having con-

tinually fought the charge at least for two decades, if not before, that it is foreign controlled the lack of affirmative, substantial evidence of independence is all the more significant.

The short of it is this and, to a substantial degree, it can be found through the hundreds of official documents in evidence alone—the Communist Party began its history by voluntarily submitting to the control of the Soviet Union and adopting that nation's international program for the Communist movement. The record shows that neither the basic program or objectives of the Soviet led world Communist movement nor those of respondent have changed. And, beyond that, respondent itself points to no real cleavage.

Thus there is inside our border a disciplined organization which under Soviet Union control seeks, by unconstitutional means, to install a Soviet style dictatorship in the United States, just as other Communist Parties in other countries have done. At no time does respondent declare that it is singular among Communist Parties in the world.

Our reconsideration of the record as expunged leads to the conclusion that the evidence establishes beyond doubt that respondent is substantially directed, dominated, and controlled by the Soviet Union, which controls the world Communist movement referred to in section 2 of the Act, and operates primarily to advance the objectives of such world movement; and our prior determination to this effect is reaffirmed.

We find, therefore, that the Communist Party of the United States is a Communist-action organization, as defined.

[fol. 2610]

#### RECOMMENDATION

Pursuant to section 14(a) of the Act, it is recommended that the United States Court of Appeals for the District of Columbia Circuit affirm the Board's Order entered April 20, 1953, requiring the Communist Party of the United States to register as a Communist-action organi-

zation under section 7 of the Subversive Activities Control Act of 1950.

Thomas J. Herbert, Chairman, Francis A. Cherry, Member, R. Lockwood Jones, Member, James R. Duncan, Member, Dorothy McCullough Lee, Member.

(Seal)

December 18, 1956, Washington, D. C.

[fol. 2611]

BEFORE SUBVERSIVE ACTIVITIES CONTROL BOARD

Docket No. 51-101

HERBERT BROWNELL, JR., Attorney General of the United States, Petitioner,

v.

THE COMMUNIST PARTY OF THE UNITED STATES OF AMERICA, Respondent.

ORDER

The Board having this day issued, pursuant to remand from the United States Court of Appeals for the District of Columbia, its Modified Report and Recommendation in this proceeding, it is hereby

Ordered that said Modified Report and Recommendation be filed forthwith in the Court of Appeals and a copy thereof served on each party.

Thomas J. Herbert, Chairman, Francis A. Cherry, Member, R. Lockwood Jones, Member, James R. Duncan, Member, Dorothy McCullough Lee, Member.

(Seal)

December 18, 1956, Washington, D. C.

[fol. 2612]

## APPENDIX A

*The Witnesses*

Of the nineteen witnesses for petitioner, sixteen were former members of respondent. All three of the witnesses for respondent are members of the CPUSA. The periods of membership appear in parentheses after the names of witnesses. An asterisk appears after the names of witnesses who joined or rejoined respondent as a result of conference with the Federal Bureau of Investigation.

*Petitioner's Witnesses*

A. Petitioner's witnesses—formerly members of the respondent:

**BERENIECE BALDWIN\***: (1943-1952) Membership director of Party Club in 1943; delegate to Michigan State Communist Party Convention in 1944; handled registration and membership records for Michigan District in 1947-1948; secretary of Party Section 1947-1950.

**JOHN VICTOR BLANC\***: (1934-1936; 1944-1949) Attended CPUSA schools in 1947 and 1948; dues secretary of Party Club in 1944; press and literature director for Party Club; organized and was chairman of Party Club 1947-1949; attended Ohio State Communist Party Convention in 1945, 1947 and 1948.

**LOUIS FRANCIS BUDENZ**: (1935-1945) Member, New York State Trade Union Committee, 1936-1937; labor editor of the *Daily Worker*, 1936-1937; member of respondent's National Committee, 1936-1940; member of Illinois State Committee, 1937-1940; editor, *Midwest Daily Record*, 1937-1940; member of New York State Committee, 1940; president of Freedom of Press Company, Inc., 1940-1941; managing editor, *Daily Worker*, 1941-1945; alternate member, National Committee of Communist Political Association, 1944-1945.

**WILLIAM GARFIELD CUMMINGS\***: (1943-1949) Press director, secretary, vice chairman, and chairman of Party Clubs; member, Ohio State Communist Party Committee;



delegate to Ohio State Communist Party Convention, 1945 and 1948; delegate to CPUSA National Convention, 1948.

**TIMOTHY EVANS, JR.\***: (1948-1952) Chairman of Party Club; delegate to CPUSA regional convention in 1951; group leader and section educational director in 1951; assigned as "underground" member of CPUSA in summer 1951.

[fol. 2613] **BENJAMIN GITLOW**: (1919-1929) Helped organize respondent in 1919; member of Labor Committee and National Committee of Communist Labor Party; member of Political Committee (governing body) for most of time as member of respondent; member of Secretariat, 1927-1929; General Secretary, 1928-1929; member, Executive Committee of Red International Trade Union, 1928-1929; present at conferences in Moscow, 1927, 1928, 1929; member, Executive Committee of the Communist International, 1928-1929.

**BALMES HIDALGO\***: (1946-1949) Membership director of Party Club; financial secretary of Party Club; press director of Party Section; attended Party leadership school, 1947.

**NATHANIEL HONIG**: (1927-1939) Discussion leader in Party Unit; employed by *Daily Worker*; editor, *Timber Worker*, 1937-1938, also editor of *Labor Unity*, 1930-1934; attended CPUSA National Convention, 1929-1934; teacher at Lenin School in Moscow, 1934-1935; representative of Trade Union Unity League to Red International of Labor Unions (Profintern) in Moscow; managing editor of *Western Worker*, 1936-1937.

**JOHN EDWARD JANOWITZ\***: (1943-1952) Member of various Party Clubs and Shop Units; alternate delegate to CPUSA Ohio State Convention, 1950.

**JOSEPH KORNFEDER**: (1919-1934) Helped organize respondent in 1919; Branch organizer, 1919-1920; member, Central Committee, 1920-1924 and 1926-1928; labor union activities director, 1921-1922, eastern area director, 1920-1927; member, district committee and district bureau of Ohio, 1932-1934; general secretary, Trade Union Unity Council of New York; member, district bureaus and district

committees; attended Lenin School in Moscow 1927-1930; Communist International representative in South America, 1930 and 1931.

**JOHN LAUTNER:** (1929-1950) District Secretary of CPUSA National Hungarian Bureau in various states during 1930-1941; organizer in CPUSA sections and districts 1933 and 1936; director, CPUSA National Training School for Hungarian members, 1932; head of New York State Communist Party Review Commission, Fall 1947; member of CPUSA National Review Commission and in charge of security for New York State Party, 1948-1950.

**MARY STALCUP MARKWARD\*:** (1943-1949) Chairman, Party Club in 1944; membership director and treasurer for City of Washington, 1944; City Committee for Washington, D. C., 1945; member, District Committee, 1945 and 1948; visitor at Party National Convention in 1944.

[fol. 2614] **FRANK STRAUS MEYER:** (1934-1945) Transferred from British Communist Party; worked in Paris for British Communist Party in 1934; associated with British Young Communist League's Secretariat of the Central Committee; active in youth work in United States and Canada while a member of CPUSA; Area secretary, youth section, American League Against War and Fascism; Educational Director of Party Section, 1935-1937; Director, Chicago Workers' School and District Educational Director, 1938-1941; District Membership Director and Assistant Organizational Secretary, 1941-1942; instructor at Jefferson School, 1944.

**WILLIAM ODELL NOWELL:** (1929-1936) Student, instructor and director in Communist Party School in Detroit, Michigan; member and secretary of District Negro Commission, 1929; member of Michigan District Bureau and District Secretariat, 1930; member and later President of the Detroit Chapter of the Anti-Imperialist League, 1929; member, International Labor Defense, 1929; organizer, American Negro Labor Congress, 1929; Communist Party organizer in Auto Workers Union and Union representative to founding convention of Trade Union Unity League, 1929; manager, Workers' Book Store, De-

troit, 1930; circulation manager of *Daily Worker* and Education Director in Michigan District; attended Lenin School, Moscow, 1931; Communist Party delegate to a celebration of Russian Revolution in Moscow, 1929; representative of Trade Union Unity League to Profintern.

**HERBERT A. PHILBRICK\***: (1944-1949) Joined Massachusetts Youth Council in 1940 and was later chairman; joined Young Communist League in 1942 and American Youth for Democracy in 1943; member, Communist Party State Education Commission of Massachusetts; chairman, Massachusetts Communist Party leaflet production; alternate delegate, Massachusetts Communist Political Association Convention, 1945; State Treasurer, American Youth for Democracy, 1943-1945; Cell Organizer, 1944; attended Communist Party Training School, 1945; District Educational Director, 1947; Professional Group Literature Director, 1947-1949.

**DANIEL SCARLETT\***: (1947-1952) Member of various Communist Party Clubs in 1947-1948; Press Director, El Sereno Club, 1948; Club organizational secretary, Mexican Concentration Club, 1948-1951; transferred to "underground" January 1951.

B. Petitioner's witnesses—never members of or connected with respondent.

**JOHN W. CARRINGTON**: Clerk of the Un-American Activities Committee of the House of Representatives. This witness was subpoenaed by the Attorney General in this proceeding to produce and authenticate, in his official capacity, certain documents from the files of the House Un-American Activities Committee.

[fol. 2615] **ALEXANDER LOGOFET**: Born and educated in Russia. Formerly employed by the Czarist government. Presently Russian interpreter for International Conferences for the Department of State. This witness was subpoenaed by the Attorney General in the instant proceeding to translate a document in the Russian language. (Petitioner's Exhibit No. 3.)

**PHILIP E. MOSELY**: Director of the Russian Institute; Professor of International Relations, Columbia University.

Dr. Mosely testified as an expert for the Attorney General in regard to the allegations of the Petition under Section 13(e)(2) of the Act.

*Respondent's Witnesses*

**HERBERT APTHEKER:** (1939 to present) Dr. Aptheker testified as an expert on Marxism-Leninism. Member of a Brooklyn Communist Party Club, 1940-1941; teacher, Jefferson School of Social Science, 1946 to present; editor, *Masses and Main Stream*, 1948 to present; managing editor, *Political Affairs*—about 1950 to present; trustee, Jefferson School, New York City, 1950 to present.

**ELIZABETH GURLEY FLYNN:** (1937 to present) Member, National Committee, 1938 to present; chairman of Women's Commission of Communist Party, 1945 to present; chairman of Defense Commission, CPUSA, 1948 to present; columnist for *Daily Worker*, 1937 to present; delegate to Congress of Women for Peace, Paris, 1945; member, Political Bureau, later called National Board, 1941-1946, 1948; representative of *Daily Worker* at 80th birthday party for Marcel Cachin in Paris, 1949; representative of CPUSA to French Communist Party Congress, 1950.

**JOHN GATES:** (1933 to present) Member of Young Communist League, 1931; organizer for the League, 1932-1937; organizer of various clubs in Youngstown and member of the Section Committee, 1933-1937; member, International Brigade in Spanish Civil War in 1938 and rose to rank of Brigade Political Commissar (Lt. Col.); National Executive Secretary, Friends of Abraham Lincoln Brigade, 1939; National Education Director of Young Communist League, 1939-1940; "Head", Young Communist League for New York State, 1940; United States Army, December 17, 1941-January 17, 1946; elected member, National Council Communist Political Association *in absentia*, 1944; elected member of National Committee of Communist Party *in absentia*, 1945; National Vets Director Communist Party, 1946-1947; member, National Committee, Communist Party, 1946 to present; chairman, National Legislative Commission, 1947-

1951; member, National Board, Communist Party, 1947 until it was discontinued; editor, *Daily Worker*, 1947 to present; chairman, National Review Commission, 1951.

[fol. 2616]

SUPREME COURT OF THE UNITED STATES

No. 48, October Term, 1955

COMMUNIST PARTY OF THE UNITED STATES  
OF AMERICA, Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

JUDGMENT—April 30, 1956

This Cause came on to be heard on the transcript of the record from the United States Court of Appeals for the District of Columbia Circuit, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said United States Court of Appeals, in this cause, be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States Court of Appeals for the District of Columbia Circuit with directions to remand the case to the Subversive Activities Control Board for proceedings in conformity with the opinion of this Court.

April 30, 1956

Dissenting opinion by Mr. Justice Clark in which Mr. Justice Reed and Mr. Justice Minton join.

Filed May 16, 1956

Joseph W. Stewart, Clerk

[fol. 2758] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
No. 11850

COMMUNIST PARTY OF THE UNITED STATES  
OF AMERICA, Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board and on Further Hearing Following Further Proceedings before the Subversive Activities Control Board on Remand Pursuant to the Judgment of the Supreme Court.

*Mr. John J. Abt*, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of Court, and *Mr. Joseph Forer* for petitioner.

*Mr. George R. Gallagher*, General Counsel, Subversive Activities Control Board, with whom *Messrs. Frank R. Hunter, Jr.*, and *Leo M. Pellerzi*, Assistant General Counsel, Subversive Activities Control Board, and *Messrs. Harold D. Koffsky, Philip R. Monahan*, and *William F. O'Donnell, III*, Attorneys, Department of Justice, were on the brief, for respondent.

Before PRETTYMAN, BAZELON and DANAHER, Circuit Judges.



[fol. 2759]

OPINION—January 9, 1958

Prettypmap, Circuit Judge: This is the second time this case has been here. After our decision upon the first petition<sup>1</sup> the Supreme Court ordered the case remanded to the Subversive Activities Control Board for reconsideration under Section 14(a) of the Subversive Activities Control Act<sup>2</sup> in the light of allegations that the testimony of three witnesses, Crouch, Johnson and Matusow, who had testified for the Government at the original hearing, was perjured.<sup>3</sup> The Board struck the testimony of those witnesses and issued a Modified Report and an order based thereon. The Party petitions for review of that order.

## I

The Party renews all the points of law it presented upon its first petition to this court. Upon reexamination we adhere to, and now reaffirm, the views we expressed in our opinion in that case.

## II

Section 3(3)(a) of the Act<sup>4</sup> provides:

"Sec. 3. For the purposes of this title—

"(3) The term 'Communist-action organization' means—

"(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government [fol. 2760] or foreign organization controlling the world Communist movement referred to in section 2 of this

<sup>1</sup> Communist Party of U. S. v. Subversive Activities Control Board, 96 U.S. App. D.C. 66, 223 F.2d 531 (1954).

<sup>2</sup> 64 Stat. 1001 (1950), 68 Stat. 780 (1954), 50 U.S.C.A. § 793(a).

<sup>3</sup> Communist Party v. Subversive Activities Control Board, 351 U.S. 115, 100 L.Ed. 1003, 76 S.Ct. 663 (1956).

<sup>4</sup> 64 Stat. 989, 50 U.S.C.A. § 782(3)(a).

title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; \* \* \* ."

In the language of this litigation the foregoing definition is said to have two components, a control component and an objective component. The Party says the findings of the Board are not supported by a preponderance of the evidence, in that the evidence does not support the finding as to control within the meaning of the control component and does not support the finding as to objectives within the meaning of the objectives component. The point rests upon a construction of the quoted section of the statute.

The Party says the control component means a relationship in which the Soviet Union exercises an enforceable power to exact compliance with its demands, and the Party adds of course that there is no showing that the Soviet has any means of enforcing conformity by the Party with Soviet desires. But we think this construction of the statute would be erroneous. In the first place, and conclusively, Section 13(e) of the statute makes the matter clear. That section says: "In determining whether any organization is a 'Communist-action organization', the Board shall take into consideration" a list of eight subjects. Among these items are such things as "the extent to which its views and policies do not deviate from those of such foreign government" and "the extent to which it reports to such foreign government". These items demonstrate that the definition of a Communist-action organization was not intended by the Congress to be restricted to organizations which are subject to enforceable demands of the Soviet Union. In the second place the words of Section 3(3) do not necessarily imply enforceable power. The words are "substantially directed, dominated, or controlled" [fol. 2761]. The statute uses the word "substantially". An organization or a person may be substantially under the direction or domination of another person or organization by voluntary compliance as well as through compulsion. This is especially true if voluntary compliance

<sup>3</sup> 64 Stat. 999, 50 U.S.C.A. § 792(e).

is simultaneous in time with the direction and is undeviating over a period of time and under variations of direction. If the Soviet Union directs a line of policy and an organization voluntarily follows the direction, the terms of this statutory definition would be met.

As to the objectives component of the definition the Party says this clause in the statute requires proof that the accused organization operates primarily to advance three objectives: (1) overthrow of the Government by any means necessary, including force and violence; and (2) establishment of a Communist totalitarian dictatorship, which (3) will be subservient to the Soviet Union. The Party says the Board found only the first of these three objectives and that its finding is not supported by the evidence and is based in large part on misrepresentations of the evidence. The Party derives its construction of the objectives component by analyzing Section 2 of the statute. That section is a recitation of fifteen findings made by the Congress. In these fifteen findings the Party discerns findings as to the objectives of the world Communist movement. As thus discerned the Party describes these objectives in three parts, as we have just indicated. The Board clearly concluded in the affirmative on each of the foregoing objectives. See its Modified Report at pages 39, 89-90, 194-202, 204. Its conclusions were clearly supported by a preponderance of the evidence. It would prolong this opinion beyond permissible length even to sketch that evidence. It is referred to at length in the Modified Report. So, even if we accept the Party's analysis of Section 2—we intimate no opinion upon whether [fol. 2762] or not that analysis is accurate—we think the objectives component of the definition of a Communist-action organization has been met.

### III

The Party says the Board's finding with reference to a world Communist movement, if authorized by the Act, is not supported by the evidence. By "if authorized by the Act" the Party is referring to the section of the Act

\* Available from the Government Printing Office.

(Section 2) which contains a congressional finding upon the existence and characteristics of the ~~world~~ Communist movement. The Party says that in view of that finding the subject may not be litigated. We discussed that matter in our former opinion. The finding made by the Board is, in our view, supported by ample evidence in this record. So, whether that finding is superfluous or not, the fact is established, either by the congressional finding or by the Board finding, or by both.

#### IV

The Party says that the order of the Board must be set aside because the Board refused to require production of alleged reports made to the Federal Bureau of Investigation by Government witnesses. Reports said to have been made by four witnesses—Scarletto, Gitlow, Bude and Markward—are involved. The Party moved for the production of these reports both at the original trial and at the hearing after remand.

#### *Scarletto.*

The Board affirmatively stated that Scarletto's testimony was not credited. It said:

"Relevant to this issue petitioner's witness Scarletto testified concerning a meeting of a Party club where sabotage of United States efforts in the Korean War were discussed, however, this testimony was rendered questionable on cross-examination and is not credited."

[fol. 2763] The Party's objective in demanding production of Scarletto's alleged report to the F.B.I. was to impeach him as a witness. Since the Board did not credit the testimony that objective was achieved. The Party accomplished the full purpose it sought from the production of the report. We need therefore consider this point no further.<sup>o</sup>

#### *Gitlow.*

Gitlow was for years a high official of the Communist Party—a member of the Executive Committee of the Com-

munist Internationale, a member of the Executive Committee of the Profintern, and head of American delegations to Moscow in 1928 and 1929. In 1929 he was expelled from the Party because of a difference with Joseph Stalin on the question of the leadership of the American Communist Party. Over a decade later, in about 1940, Gitlow turned over to the F.B.I. all documents and papers in his possession pertaining to the Party, including a quantity of minutes of meetings of top committees. A few weeks later he dictated for the F.B.I., over a period of weeks, memoranda explaining and interpreting those documents.

Gitlow was not at any time an employee of the F.B.I. He never at any time made to the F.B.I. contemporaneous reports of events.

Much of Gitlow's direct testimony before the Board consisted of his identification of documents which he had delivered to the F.B.I. He explained those documents on the witness stand.

While Gitlow was testifying before the Board he was shown a document, which he said was a copy of his interpretation of certain minutes and documents which he had submitted to the F.B.I. He was asked whether this document refreshed his recollection. He replied that it did not—"Not at all." The Government gave counsel for the Party the memorandum with which the Government attempted to refresh the witness's recollection. The dispute here concerns the remaining memoranda.

[fol. 2764] The Party moved that the Attorney General be directed to produce for the inspection of the Party the so-called explanatory memoranda.

The problem posed is this: Where a witness, approximately contemporaneously with turning over to the F.B.I. quantities of minutes of Party meetings, wrote for the F.B.I. interpretations and explanations of those documents, and the witness testified before this Board at length in explanation of the same documents, must his explanatory memoranda be produced upon request?

The first point here concerns the status of the documents involved; they are official possessions of the F.B.I. The Government repeatedly urges that they are confiden-

tial. Only in its brief here, and only in one sentence, does it claim they are privileged. There is a vast difference between confidential and privileged. Almost any communication, even an ordinary letter, may be confidential. Such a document may not relate to any matter of high public concern. But privileged means that the contents are of such character that the law as a matter of public policy protects them against disclosure. A communication from a person to his banker may be confidential, but it is not privileged; certain of his communications to his doctor or his lawyer are not only confidential but also privileged; the law does not permit their disclosure even under *subpoena* by a court. So, too, with Government documents. Some are privileged, such, for example, as the President's advices in the conduct of foreign affairs and some papers relating to the internal security of the nation.

The Government did not claim before the Board in the present proceeding that the documents here involved are privileged. No factual allegations as to privilege have been made. We cannot consider an unsupported claim made only in the brief here that the doctrines of privilege apply. That the documents are merely confidential does not protect them against compulsory disclosure. Of course this does not mean such documents must be produced upon [fol. 2765] every demand; good cause for intrusion into confidential files and materiality and relevancy must be shown. The law in that area is well settled.

We must next consider the contention of the Government that the Party has waived its right to the Gitlow memoranda. The Gitlow testimony and its accompanying incidents occurred at the original hearing before the Board. The production of the explanatory memoranda was demanded at that time. In its petition for review in this court the Party asserted error (No. 14 of grounds for relief) in the refusal of the Board to order production of documentary evidence but without specification of that evidence. In its brief the Party asserted the point as question number 5. It does not refer us to any place in the argument portion of its brief on that appeal where the production of the Gitlow memoranda was mentioned, and we find none. The matter seems not to have been mentioned in the Supreme Court.



The Government argues that failure to raise the point in the Supreme Court spells abandonment of the point by the Party. We do not think so. Rule 23(c) of the Rules of the Supreme Court provides for a statement of the questions presented for review. It provides that the statement of a question will be deemed to include every subsidiary question "fairly comprised therein" and that only such questions will be considered by the Court. But that seems to us not to be a basis for concluding that all questions not stated or "fairly comprised" in a statement are abandoned. To be sure, if a judgment is affirmed by the Supreme Court, all questions presented and all which might have been presented are *res judicata*. But, if the judgment is reversed or vacated on a single point (e.g., a constitutional question and the only point presented to the Court), other claims of error are not foreclosed upon a retrial or reconsideration upon a general remand. Of course, if the Supreme Court reverses and directs that a certain final judgment be entered, the whole controversy [fol. 2766] is ended. We are here considering a reversal or vacation with a remand, as, for example, "for further proceedings in accordance with this opinion." Such a remand, or a general unqualified remand, means that the appellate court and trial court are to reconsider the case on all other points. Those points remain open after the Supreme Court's disposition of the case before it. By way of illustration, if an appellant urges six errors in this court, one of which is a constitutional question, and being unsuccessful here goes to the Supreme Court on that one point and is there successful, he is not precluded from urging his view of the correct ruling on his other points when he again tries or argues his case in the appellate or trial court. If this were not so, almost every petition to the Supreme Court would be burdened with a plethora of "questions presented" in which the Court has no interest and should have none. We think the Party did not abandon points raised in this court but not mentioned in the Supreme Court.

So the problem becomes this: Did the Party abandon this point when it stated the point in its petition for review and its brief but did not argue it here? We think

a party in this court does not abandon points noted in both his petition and his brief but not argued. He takes a calculated risk. If the judgment is affirmed here, all points which are raised or which could have been raised are closed to further controversy. But if the judgment is reversed on one point the other points, preserved by notation, remain available for further contest. We conclude that the Party did not abandon its contention in respect to the Gitlow memoranda.

The Government next argues that, when the Board first refused production of the memoranda, the Party had a remedy and that remedy was exclusive. It was to apply to this court for leave to adduce additional evidence, *i.e.*, the memoranda, under Section 14(a) of the statute.<sup>7</sup> That [fol. 2767] section provides: "If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper." The Government relies upon *Consolidated Edison Co. v. National Labor Relations Board*.<sup>8</sup> We agree that we are bound by that case. The facts there were that when the Government rested its case before the Board the Company announced it would present two witnesses. It did so and then proffered two more witnesses, present in the hearing room, whose testimony would be material but short. The examiner rejected the proffer. In the Court of Appeals for the Second Circuit the Company urged that the rejection was error amounting to denial of due process. That court said:

"These witnesses were at hand, their testimony would have been short, and would have entailed no appreciable delay in closing the hearings. It was vital testimony on the issue of the petitioners' motive in discharging him. Denial of leave to introduce it ap-

<sup>7</sup> *Supra* note 2.

<sup>8</sup> 305 U.S. 197, 83 L.Ed. 126, 59 S.Ct. 206 (1938).

pears to us unreasonable and arbitrary. However, the petitioners have not applied to this court for the taking of additional evidence, as they might under section 10(e), 29 U.S.C.A. § 160(e)."<sup>9</sup>

The court did not consider the point further and directed enforcement of the Board's order. In the Supreme Court the Company again presented the point, *inter alia*. The Court said:

" . . . An offer of proof was made which showed the testimony to be highly important with respect to the reasons for the discharge. It was brief and could [fol. 2768] have been received at once without any undue delay in the closing of the hearing.

"We agree with the Court of Appeals that the refusal to receive the testimony was unreasonable and arbitrary. Assuming, as the Board contends, that it had a discretionary control over the conduct of the proceeding, we cannot but regard this action as an abuse of discretion. But the statute did not leave the petitioners without remedy. The court below pointed to that remedy, that is, to apply to the Court of Appeals for leave to adduce the additional evidence; on such an application and a showing of reasonable grounds the court could have ordered it to be taken. § 10(e)(f). Petitioners did not avail themselves of this appropriate procedure."<sup>10</sup>

The Court did not discuss the point further and affirmed the Court of Appeals judgment with modification not material here.

As we read the opinion and decision in the *Consolidated Edison* case it means that, when proffered evidence is denied receipt by the trial tribunal in a case in which a statute similar to Section 19(e) of the National Labor

<sup>9</sup> *Consolidated Edison Co. v. National Labor Relations Board*, 95 F.2d 390, 397 (1938).

<sup>10</sup> *Supra* note 8, 305 U.S. at 226.

Relations Act<sup>11</sup> applies, the profferor must apply to the appropriate United States Court of Appeals for permission to adduce the additional evidence; if he fails so to move he cannot successfully present the point on appeal. The rule applies even though the evidence is "highly important" and is brief and immediately available and re-[fol. 2769] jection of it is "unreasonable and arbitrary". Other courts have so read that opinion.<sup>12</sup>

It may be said that the ruling we have just outlined creates a right to interlocutory relief in such cases, to multiple appeals to the appellate courts, and gives no effect to the provision of the Labor Relations Act which requires that to secure permission to adduce additional evidence the movant must show "that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board". It may also be, as the Eighth Circuit has held,<sup>13</sup> that the petition for review in such a case should be treated as a motion to adduce the additional evidence. But if that were correct we do not see why the petition was not so treated in the *Consolidated Edison* case. There is much force to these various suggestions, and perhaps we misconstrue the opinion of the Supreme Court. But we are bound by the opinion as we read it.

The statute in the case at bar is substantially identical with the pertinent part of the statute involved in the *Consolidated Edison* case. The Party did not move in

<sup>11</sup> 49 Stat. 454 (1935), 61 Stat. 148 (1947), 29 U.S.C.A. § 160(e), reading in pertinent part: "If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript."

<sup>12</sup> *National Labor Relations Board v. Fairchild Engine & Airplane Corp.*, 145 F.2d 214 (4th Cir. 1944); *National Labor Relations Board v. National Laundry Co.*, 78 U.S. App. D.C. 184, 138 F.2d 589 (D.C. Cir. 1943); *California Lumbermen's Council v. Federal Trade Comm'n.*, 103 F.2d 304 (9th Cir. 1939).

<sup>13</sup> *Mississippi Valley Structural Steel Co. v. National Labor Relations Board*, 145 F.2d 664 (1944).

this court for permission to adduce additional evidence in the Gitlow memoranda.

The situation here differs somewhat from that in *Consolidated*. In that case the Company had its evidence ready to proffer. Here the Party must first secure the evidence,—by an order directed to the Government. But the Board on the remand refused to reopen this hearing [fol. 2770] to receive any additional evidence on Gitlow's credibility. The purpose of the request for production was to offer additional evidence of Gitlow's perjury. Without this as its purpose the Party could not obtain an order for production. If the evidence, even if produced, could not be got into the record, it need not be produced. So it seems to us that the right to adduce is a necessary prerequisite to an order of production. Thus we conclude that the rule of *Consolidated Edison* applies here. The converse can be argued, and the argument is not unreasonable. It can be said that the production of the documents is a necessary preliminary to a motion to adduce the evidence into the record; i.e., the evidence cannot be proffered until it is in hand and its relevancy and materiality are shown to the satisfaction of the court, as the statute provides. But it seems to us this latter is not the correct view; it would mean that the Government could be required to produce documents which are not, or may not be, admissible in evidence; e.g., if a record has been closed, an order of reopening ought to be made before an order of production is granted. When the statute says a movant must "show to the satisfaction of the court" that the evidence is material, it does not mean he must actually produce the evidence for the court to see; it means he must show that the evidence is in existence and what he expects to prove by it. We think, as we have indicated, that, where a proceeding is in such state that certain evidence for some reason cannot be put in the record without permission to do so, the permission must be obtained before compulsory process for production of the evidence is issued. We do not consider whether, if the motion to adduce were granted, the Government must then produce, inasmuch as this latter may involve questions of privilege, relevancy, etc.

We are of opinion that under the *Consolidated Edison* case the point respecting the refusal to order production of the Gitlow memoranda is not available to the Party [fol. 2771] upon this petition for review. Its contentions in respect to these memoranda are rejected.

### *Budenz.*

Budenz was a prominent member of the Party for ten years (1935-1945), being for part of that time the managing editor of the *Daily Worker*. The Party demanded the production of two alleged reports made by this witness to the F.B.I. The first report is alleged to have dealt with a so-called Starobin letter and the other with an alleged conversation between Budenz and a man named Weiner.

It appears that in May, 1945, Starobin, who was the foreign editor of the *Daily Worker*, sent a letter from San Francisco to that paper in New York. It was said to have disclosed that D. Z. Manuilsky, a representative of the Communist Internationale, conveyed either commands or advice to the American Communists concerning their policy and program. There appears to have been discussion in the letter concerning the attitude of the "French Comrades". After Budenz left the Party he went to the F.B.I. and had many conversations with representatives of that office concerning many matters involving the Party. Among other things he is said to have made an oral statement to the F.B.I. concerning the Starobin letter.

On the witness stand before the Board Budenz testified concerning the Starobin letter. The letter was not produced; the testimony as to its last whereabouts was that it was taken upon receipt to the "top floor" of the offices of the *Daily Worker*. Under cross examination Budenz testified to an account of the letter which he had included in his book, *This Is My Story*. He also said he had testified on the same subject before the Un-American Activities Committee. He could not recall specifically whether the advice transmitted by Starobin originated with the "French Comrades" or with Manuilsky. The Starobin letter was pertinent to the case before the Board [fol. 2772] upon the question whether the Party received directives, etc., from Communist headquarters in Russia.



The Party demanded that the Attorney General produce "all reports made by this witness to the Federal Bureau of Investigation dealing with the so-called Starobin letter."

Budenz was at no time an agent of the F.B.I. There is no evidence or indication that he ever at any time made a written report to the F.B.I. concerning the Starobin letter. The position of the Party is premised upon the assumption that if Budenz talked to an agent of the F.B.I., as he said he did, the agent made some written report of the conversation. It is such a report, if there is one, that is involved here.

The second Budenz report dealt, as we have said, with an alleged conversation between him and one Weiner. Budenz was for a time (1937-1940) editor of the *Midwest Daily Record*, "a Communist-controlled, organized and financed newspaper". The paper had financial problems, and Budenz testified that he and Morris Childs, the leader of the Communist Party in Illinois, made a trip to New York for a conference with Robert William Weiner, who was then in charge of Communist Party funds. Budenz testified before the Board: "Childs asked him if we couldn't get some money from abroad." He testified that, in the terminology used very frequently in the Party, "abroad" meant Moscow. On cross examination Budenz was asked whether in any of his books, writings, or published testimony he had ever related the alleged conversation of Childs, Weiner and himself. Budenz replied that it was his remembrance that he had, somewhere, and then he added, "I certainly have told the Federal Bureau of Investigation about it." Counsel for the Party, cross-examining, said: "I didn't ask you about that. I didn't ask you what you told the Federal Bureau of Investigation. That is private."

The present position of the Party on this point is that, if Budenz did in fact tell the F.B.I. about the conversation [fol. 2773] tion, the agent to whom he spoke certainly made a written report of it. The Party demands production of that report, if there is one.

In respect to the two written reports sought in connection with the Budenz testimony, a query immediately

arises because it is not shown there were any reports. Could the Attorney General be required to answer whether there were any such reports? Be that as it may, a dispositive fact is that if there were such reports they were not by Budenz; if these documents exist they are reports by agents recounting conversations with Budenz. Is the Party entitled to production, for impeachment purposes, of written accounts made by a third party? Would Budenz be impeached if it were shown that a third party—not presented—had written that he (Budenz) had said so-and-so? We think he would not. Such reports would not be admissible unless the author was put on the stand and subjected to cross examination. This is a classic situation requiring application of the hearsay rule. The reports, if there are any, are statements made by an unidentified third person purporting to show what a witness had said or done. The hearsay rule applies to writings. Still further, even in a criminal case under the new statute<sup>14</sup> the reports here involved are not required to be produced. The new act of Congress requires the production of "statements" but defines statements as those written, signed or approved by the witness himself, or "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital . . . recorded contemporaneously". Surely the executive files of the Government are not to be invaded more easily and with less basis in a regulatory administrative proceeding of this sort than they would be in a criminal prosecution.

[fol. 2774] We conclude on this point that the action of the Board in refusing to order production of the alleged reports involved in the Budenz testimony must be affirmed.

#### *Markward.*

Mrs. Mary Staleup Markward was an active agent for the F.B.I. from May, 1943, until October, 1949. She testified before the Board that she had inquired of the F.B.I. how she as a patriotic American citizen could help the Government in this connection and that an agent told her the way would be to join the Communist Party and fur-

<sup>14</sup> Pub. L. No. 85-269, 71 Stat. 595 (Sept. 2, 1957).

nish information. She joined the Northeast Club of the Party of Washington, D. C., and thereafter held various offices in that organization, including those of press director, treasurer, membership secretary, and chairman.

Markward was a witness for the Government upon the original hearing before the Subversive Activities Control Board. She testified in regard to a so-called Frankfeld statement and in regard to money received by her from the Government. She was vigorously attacked on cross examination. During that hearing the Party moved for production of a report by Markward to the F.B.I. concerning the Frankfeld statement and at the end of the case moved for production of all F.B.I. records relating to payments made to Markward. Both motions were denied.

In its remand the Supreme Court ordered the elimination from the case of the testimony of three witnesses, Crouch, Johnson and Matusow; it did not mention Markward. While the case was pending before the Board on the remand, the Party moved this court to direct a reopening in order that it might present further testimony showing that Markward was a perjurer. We denied the motion but in our order gave permission to the Board to reopen to receive testimony concerning Markward's statements about an Annie Lee Moss. The Board reopened for that purpose. Markward returned to the witness stand [fol. 2775] and was exhaustively cross-examined. The Party moved for production of the transcript of a security hearing in respect to Annie Lee Moss, in which Markward had testified concerning Moss, and of reports by Markward to the F.B.I. concerning Moss.

The Party now presents three issues in respect to the production of F.B.I. reports in connection with the testimony by Markward. The first issue relates to the Frankfeld statement, the second to Annie Lee Moss, and the third to payments to Markward by the F.B.I. The Party also presents an issue concerning the production of the transcript of a Security Board hearing on Annie Lee Moss.

(a) The facts concerning the Frankfeld statement were: Markward testified before the Board that at a meeting of the District Committee of the Communist Party in March, 1949, at Baltimore, Maryland, a statement made by Phil

Frankfeld, District chairman, was discussed. She said: "Phil Frankfeld had made a statement to the Baltimore Sun along the same line, stating that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union." On cross examination the witness was asked the following questions and made the following answers:

"Q. You stated here on page 5890 that Phil Frankfeld had made a statement to the Press, to the Baltimore Sun, specifically, along the same line, that the members of the Communist Party would not bear arms in any conflict between the United States and the Soviet Union. Now you say he did not make that statement or that he did make the statement to the Baltimore Sun; which is it? A. He made the statement in the meeting in which we were discussing the statement he had made to the Baltimore Sun, and my recollection very evidently has confused the actual statement he made to the Sun and the discussion of the statement he made to the Sun.

"Q. So your recollection was confused on the subject, [fol. 2776] was it not? A. It was confused on the actual wording of what he said to the Sun."

Being asked whether she had made a report in writing to the F.B.I. with respect to what Frankfeld had said regarding possible conflict between the Soviet Union and the United States, the witness replied, "I made a report at that time of exactly what transpired at that meeting."

The Party moved for production of the F.B.I. report, on the ground that "there is a clear conflict between her testimony on direct examination and what she alleges the content of that report is, as well as the exhibits themselves." The motion was denied.

When the Board reopened the hearing after the remand, and pursuant to our order granting that permission, it ordered the Attorney General to produce for inspection *in camera* by the Board Markward's report to the F.B.I. concerning the Baltimore meeting in March, 1949. The report was produced, inspected *in camera* and then sealed. Production to the Party was refused. The Board said:

"Our review of the document revealed that, though the phraseology of the witness' testimony at the hearing was not there contained, it reported statements by Frankfeld which when read in the light of the relevant exhibits, *e.g.*, Pet. Exs. 331 (Foster, Dennis statement); 332 (Frankfeld statement), 333 (Thorez statement), and 334 (Togliatti statement) [statements by Community Party leaders on the subject of force and violence] led us to conclude that production is not warranted. The report also contains other statements substantiating testimony she gave at the hearing on what transpired at the Party meeting, in addition to still other matters not here relevant. In short, from our knowledge of the record we concluded that no substantial credibility question was presented."

This is not a criminal proceeding, nor is it a civil action as that term describes judicial proceedings. It is an administrative action, conducted under the provisions of the Sub-[fol. 2777] versive Activities Control Act.<sup>15</sup> The pertinent section is Section 13 of the Act.<sup>16</sup> The Act requires a verified petition, public hearings, oral testimony, receipt of evidence, subpoenas upon request of the respondent, the right to counsel, cross examination, and a transcript of the testimony taken stenographically. It requires a report in writing by the Board, stating its findings of fact and its order, the latter to be published in the *Federal Register* when it has become final.

The statute clearly describes an adjudication as that term is used in the Administrative Procedure Act.<sup>17</sup> "To be sure, the laws under which these agencies operate prescribe the fundamentals of fair play." Their proceedings must "satisfy the pertinent demands of due process".<sup>18</sup>

<sup>15</sup> Title I of the Internal Security Act of 1950, 64 Stat. 987; 50 U.S.C.A. § 781 *et seq.*

<sup>16</sup> 64 Stat. 998, 50 U.S.C.A. § 792.

<sup>17</sup> 60 Stat. 237 (1946), as amended, 5 U.S.C.A. § 1001 *et seq.*

<sup>18</sup> *Federal Communications Comm'n v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143-144, 84 L.Ed. 656, 60 S.Ct. 437 (1940).

If this were a civil action in a court, or if it were a criminal case, the Party would be entitled to the production of these reports.<sup>19</sup> The question here is whether production is one of the fundamentals of fair play required in an administrative proceeding. We think it is.

The question is a very narrow one. The Government has not claimed privilege. It was established that Markward did make a report to the F.B.I. at or about the time of the event and that this report related to the subject of her testimony. Her credibility was vigorously attacked at [fol. 2778] precisely the point of this testimony—what Frankfeld said at the Baltimore meeting.<sup>20</sup> The testimony was important; it bore upon the problem, pertinent under Section 13(c)(8) of the Act, whether American Communists would bear arms in a war between the United States and the Soviet Union.

We hold that, where the Government places on the stand a witness who testifies about an event long past, and it is shown that this witness at or about the time of the event made a written report to the Government concerning that event, and the testimony is material, and the credibility of the witness in her testimony upon this precise point is attacked, the Government upon demand must produce the report made by the witness. We think simple justice, the fundamentals of fair play, require no less. The opinion of the Supreme Court in the *Jencks* case,<sup>21</sup> as we read it, is based upon the elementary proposition that the interest of the United States is that justice be done. The same elementary proposition applies here and leads to the same result. We must therefore remand with directions to the Board to direct the production of Markward's report to the F.B.I. concerning the Frankfeld matter.

<sup>19</sup> Fed. R. Civ. P. 34; *Jencks v. United States*, 353 U.S. 657, 1 L.Ed.2d 1103, 77 S.Ct. 1007 (1957); Pub. L. No. 85-269; 71 Stat. 595 (Sept. 2, 1957).

<sup>20</sup> Although the request for production of Markward's F.B.I. report on the Frankfeld statement was made at the original hearing, the Party preserved this point on appeal by its motion of August 17, 1956, to adduce additional evidence.

<sup>21</sup> *Supra* note 49.



(b) The facts relating to the Annie Lee Moss issue were: Mrs. Markward had testified in a Security Board hearing involving Moss in the Department of Defense and in the "Foreign Born" case before the Subversive Activities Control Board. In both cases she had said that an Annie Lee Moss was a member of the Northeast Club of the Communist Party in Washington, D.C., during the time the witness herself was a member.

[fol. 2779] In a written motion filed with the Board upon the remand the Party demanded production of the Moss security hearing transcript. The Attorney General filed the transcript under seal for *in camera* inspection by the Board. In its order reopening the hearing the Board denied the motion to produce, saying:

"We have reviewed the documents in the Moss proceeding submitted by petitioner for inclusion in the record and *in camera* inspection by the Board. The review evidences, in the light of its motion, that respondent seeks to retry the Moss Security Hearing and probe the actions and mental processes of the Security Board and the Defense Department, and this is not a function of the Board. But even if this were permissible, our review reveals that respondent's showing that witness Markward testified falsely in the Moss proceeding and was disbelieved in that proceeding is not supported. The Board will, therefore, not permit testimony to be adduced going to the question of whether witness Markward was disbelieved in the Moss Security Hearing."

When the case was reopened and Markward returned to the witness stand, she was questioned on cross examination concerning her identification of Moss as a member of the Party. She said: "I have never recognized her as a person whom I knew as a member of the Communist Party. My testimony has been as to what the records had to say about a person by the name of Annie Lee Moss." The aim of the cross examination obviously was to establish that the witness had identified Moss personally and to lay a foundation for showing that this was perjury. Mrs. Markward answered affirmatively when asked whether she stated in

reports to the F.B.I. that Annie Lee Moss was a member of the Communist Party. Thereupon the Party asked for the production of the F.B.I. report, or reports, on the matter. The Board refused production.

During this reopened hearing the Party renewed its demand for production of the Moss security hearing transcript. The motion was denied. In announcing that ruling [fol. 2780] the Chairman said that Mrs. Markward's identification of Mrs. Moss in the security hearing was confined to "her recollection of that name and an address in party records for certain years, none later than 1946, and that identification was not based on personal identification." The Chairman further said that "Since adequate foundation for production of the Moss transcript does not now exist in our view, it has not been ordered."

Thus the demands for the production of documents in the course of Markward's cross examination respecting the Moss matter were (1) Markward's reports to the F.B.I. concerning Moss and (2) the transcript of the Defense Department security hearing on Moss. The Board denied the first and, after inspecting the second *in camera*, denied its production to the Party.

Pursuant to the principles heretofore recited in this opinion relative to the Frankfeld matter, we are of opinion that we must direct the Board to order the production of the above-mentioned documents, i.e., the witness Markward's report to the F.B.I. and her testimony in the security hearing concerning Annie Lee Moss. The latter (the testimony) may be excised so that only relevant parts need be produced.

(c) The facts respecting the payments of money to Markward by the F.B.I. were: Mrs. Markward testified at the original hearing:

"Q. While you were supplying the Federal Bureau of Investigation with information, Mrs. Markward, were you paid any salary by them? What sort of financial arrangements did you have with them? A. I was not paid a salary by the Federal Bureau of Investigation. Nothing I did for my government was contingent upon receipt of any money from the Federal

Bureau of Investigation or from any other government agency.

\* \* \*  
 "Q. Did you receive any money from them at all? [fol. 2781] A. I did receive contributions to the expense of the work I was doing from time to time.

"Q. What sort of things would they be? Make exactly clear just what sort of arrangements you had. A. In this type of activity I was doing, it was very necessary to pay dues, to make contributions, to buy literature, that type of thing, and other incidental things.

"Q. Transportation to Washington. A. Yes, that was part of it."

After the close of the evidence in the original hearing the Party moved that the Board reopen the hearing in order to permit it (the Party) to prove that Markward testified falsely "in answering questions as to whether they [several witnesses] had been paid for their services as informers and as to the amount of such payments"; and "[i]n order to permit Respondent [Party] to obtain, by subpoena or by order of the Panel, the records of the Petitioner with regard to the amounts paid by or at the direction of Petitioner to each of Petitioner's witnesses." The Board denied the motion.

In a criminal case in the United States District Court for the Southern District of New York, *United States v. Flynn, et al.*, a subpoena duces tecum had been served upon the Attorney General requiring production of all vouchers, receipts, cancelled checks, and other records, showing all payments ever made by the Department of Justice or any of its constituent divisions and bureaus to Mary Staleup Markward (and others). In lieu of production of such records the prosecution supplied the defendants with figures setting forth "all payments of which it has knowledge made by United States Marshals to the aforesaid persons." It was stipulated in the *Flynn* case that Mrs. Markward had received a total of \$24,026.45 during the years 1943 through 1952. This stipulation became part of the record in that case and thus was public.

This occurred after the original hearing before the Board in the present proceeding.

[fol. 2782] After remand to the Board the Party renewed its request for an opportunity to prove that Markward had testified falsely concerning the receipt of money from the Government. The motion was again denied.

We do not rely upon *Jencks v. United States, supra*, or upon Public Law No. 85-269 for our conclusion that the records of Markward's compensation from the F.B.I. must be produced, since these records are not "statements" of the witness but are rather records of an executive department maintained in the course of carrying out its functions. Our conclusion is based on the general proposition, exemplified by Rule 34 of the Federal Rules of Civil Procedure, that, where one party to an action is shown to have documentary evidence contradictory to the testimony of one of its witnesses, production of such documents is required upon request of an opposing party.

(d) The Blumberg matter. The essence of the Blumberg situation is: Markward testified at the trial of one Blumberg, a public proceeding in a United States District Court. Her pertinent reports to the F.B.I. were produced, and she was cross-examined at length upon that foundation. In the present proceeding the Board admitted in evidence proffered portions of the transcript of the Blumberg trial, consisting in large part of the cross examination of Markward. It refused to permit re-cross examination of Markward upon her testimony at the Blumberg trial. It also refused to admit in evidence the F.B.I. reports in that case. It did consider, in evaluating Markward's testimony, the testimonial inconsistencies which could be noted in the Blumberg transcript. We think the action of the Board was not unreasonable. We will not reverse on the point.

## V

The Party says the order of the Board must be set aside because it relied on the tainted testimony of the witness Markward.

[fol. 2783] Since, as we have already said, we are remanding for the receipt of further evidence concerning this

witness, if such evidence be offered after production of the documents involved, we do not now consider this point:

## VI

The Party says the order must be set aside because the Board applied biased standards of credibility, based findings on misrepresentations of the evidence, and relied on tainted testimony. The first two of these allegations do not require discussion, as we find no support for them in the record. The third requires discussion.

The Party says the testimony of the witnesses Honig, Budenz and Gitlow was "tainted" and therefore should have been stricken. It argued this point to us upon the first appeal and also to the Supreme Court. It argues the point at length in its brief now before us. The Board, in its Memorandum Opinion on the motion to strike, says that, while it recognizes that the Supreme Court remanded specifically for the elimination of the testimony of Crouch, Johnson and Matusow and that therefore technically no other allegations of "taint" were before it on the remand, it conceives the spirit of the Supreme Court's opinion to permit its reevaluation of the testimony of the witnesses Honig, Budenz and Gitlow. It made that reevaluation and concluded there was no warrant to strike their testimony.

The Supreme Court did not mean in its opinion in this case that whenever testimony is challenged as perjurious it must be expunged or disregarded. Challenges to veracity and charges of falsity are commonplaces in the courtroom. The customary charge to a jury is that, if a juror believes a witness has consciously lied about a material matter, he is at liberty to disbelieve—may disbelieve, not must—the whole of that witness's testimony.<sup>22</sup> The charge of perjury [fol. 2784] jury on the part of Crouch, Johnson and Matusow was not challenged or denied by the Government. The Court specifically gave the Board the option of holding "a hearing to ascertain the truth of petitioner's allegations, and if the testimony of the three witnesses is discredited, it must not leave that testimony part of the record."<sup>23</sup> As

<sup>22</sup> See 3 Wigmore, Evidence § 1010 (3d ed. 1940).

<sup>23</sup> *Supra* note 3, 351 U.S. at 125.

to the witnesses Honig, Budenz and Gitlow the charges of perjury are vigorously disputed by the Government and have been twice examined by the Board. We find no clear error in its conclusions upon the matter. The credibility of witnesses must be left in large part to the hearer of the testimony, a proposition too elementary to require citation of authority. We affirm the Board on this point.

## VII.

The Party urges that the case must be remanded because the Board in its Modified Report modified its original findings for reasons not arising from expunging the testimony of Crouch, Johnson and Matusow or the additional evidence by Markward. Its argument is that the Board could have done one or the other of two things: (1) It could have simply expunged the tainted testimony and reappraised the evidence in the light of that elimination. This would have been a reexamination under Section 14(a) of the Act, which is what the Supreme Court and this court told the Board to do. But, says the Party, in such a proceeding the ultimate point at issue is the validity of the original order, which means its validity as of the time of its adoption, and subsequent events are not to be considered in support of it. (2) The Board could have embarked upon the consideration of a new order, taking into account all relevant data and events occurring up to the close of those proceedings. In that event, says the Party, the original order would be deemed to be [fol. 2785] abandoned and should be rescinded on the record. This would not have been a mere Section 14(a) proceeding but would have been a new proceeding with new issues. The Party says the Board actually took neither of these two alternative courses but, instead, reconsidered its original order, bringing to its support subsequent events, and made new findings not in its original findings.

We think the basic position of the Party as to the two alternatives is correct, but we do not find that the Board followed the composite course the Party asserts was followed.



The nub of the Party's contention, from a practical point of view, is that the Party upon the remand sought the admission into evidence of certain events which it says took place after the Board's original order and which tend to show the independence of the Party from domination, etc., by those in control of the world Communist movement. The Board rejected the proffer as improper under the remand under Section 14(a) of the Act.

It seems obvious to us that in a Section 14(a) remand proceeding directed by the Supreme Court the Board could expunge the testimony of Crouch, Johnson and Matusow and then make revised findings if it found the expunction required revised findings. Such is the purpose of the remand. It seems equally obvious that the Board, in reexamining its findings after the expunction, could cite additional or other bits of evidence in the record to support its findings. Neither commissions nor courts always cite every bit of evidence in a record supporting the findings, however desirable and commendable that practice may be. Nothing prevents later citation of any or all evidence in the record supporting a given conclusion or finding. We think the Board did no more than what we have described as these proper courses.

The Party refers us to twelve instances as the more important examples of invalid revisions by the Board of its original report. We have examined each of the twelve [fol. 2786] carefully. We find that the record does not support the Party's allegations. The record shows that the revisions (1) followed from the expunction of the Crouch-Matusow-Johnson testimony relied upon in part in the original report, (2) cited in support of a finding some evidence in the original record but not specifically cited in that report, or (3) were mere rearrangements or rephrasings. Thus, for example, the *History of the Communist Party of the Soviet Union* was in the original record as Petitioner's Exhibit 330, the *Programme of the Communist International* was Petitioner's Exhibit 125, and the report by Gilbert Green was mentioned in the original report at page 63 of the Joint Appendix. The findings on "Reporting" (point 3), "Secret Practices" (point 4), "Dis-

cipline and Democratic Centralism" (point 6); "World Communist Movement" (point 7), and "Force and violence" (point 10) were originally based in part upon the testimony of Crouch, Johnson and Matusow. The Party says that, whereas the Board in its first report keyed its findings to the specific criteria in Section 13(e) of the Act, in its Modified Report it keyed some of them directly to the definition in Section 3(3). But, as we have said, the criteria of Section 13(e) are directed to a determination within the bounds of Section 3(3). We find no merit in the point. We find no merit in the point (number 2) concerning the changes in the Board's findings as to "Directives and Policies". The Board certainly retained the substance of its original findings. And the same should be said of point 5, "Marxism-Leninism". As to point 8, "Party name", the Board commented on its significance in the original report. In point 9, "Foreign representatives", the Party complains that the Board dropped a finding as to J. Peters. That original finding was based in part at least upon the testimony of Crouch and Matusow. The Party complains that in the Modified Report the Board said it scrutinized with care the testimony of Honig, Scarletto and Cummings. It did this, as we have [fol. 2787] said, in accordance with the spirit of the remand. We find no error.

The evidence cited by the Board in connection with "Anti-Imperialism" (point 12) was all in the original record, with one exception. It develops that Exhibit 484, referred to by the Party in this point of its brief, was never admitted in evidence; in fact it was denied admission. It is cited and quoted in two places in the Modified Report, pages 94 and 120. Upon the remand the Board will strike references to that exhibit and eliminate it as support for any findings. This may necessitate reappraisal of the remaining support for some findings. If so, that reappraisal shall be made and the findings revised accordingly. We affirm the Board on point 12 in all other respects questioned by the Party.

With the exception just noted we affirm the Board upon the point discussed under part VII of this opinion.

## CONCLUSION

In summary we remand to the Board for the production of the reports by the witness Markward to the F.B.I. as indicated in the course of this opinion. The remand for this purpose is a remand under Section 14(a) of the statute. On all other points (with the exception noted under part VII) we affirm the Board.

We are authorized to say that Judge Bazelon adheres to the view set forth in his dissenting opinion filed earlier in this case, that the Act violates the Fifth Amendment and hence it is unnecessary for him to reach other issues presented in that connection. He agrees with (1) the remand for the purposes we have outlined in part IV of this opinion, and (2) the denial of the Party's request for discovery with respect to the witness Scarlettto. He disagrees with the denial as to (1) reports alleged to have been made to the F.B.I. by the witnesses Gitlow and Budenz, and (2) matters in the *Blumberg* case affecting the witness Markward. On the question discussed in part [fol. 2788] VII—whether the Board's revised report is improper under the mandate of the Supreme Court and this court—it is his position that, since the Board's action in response to the instant mandate may again change the Report, decision should be withheld at this time.

*Remanded.*

[fol. 2789]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner.

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board and on Further Hearing Following Further Proceedings before the Subversive Activities Control Board on Remand Pursuant to the Judgment of the Supreme Court.

Before: Prettyman Bazelon and Danaher, Circuit Judges.

JUDGMENT—Dated: January 9, 1958

This case came on for further hearing on the record from the Subversive Activities Control Board following further proceedings before the Board on remand pursuant to the judgment of the Supreme Court, and was argued by counsel.

On Consideration Whereof, It is ordered by this Court that this case be, and it is hereby, remanded to the Subversive Activities Control Board pursuant to Section 14(a) of the Subversive Activities Control Act of 1940, 64 Stat. 1001 (1950), as amended by the Communist Control Act of 1954, 68 Stat. 780 (1954) [50 USCA Sec. 793(a)] for further proceedings in conformity with the opinion of this Court.

Per Circuit Judge Prettyman.

Circuit Judge Bazelon adheres to the view set forth in his dissenting opinion filed earlier in this case (96 U.S. App. D.C. 66, at p. 111; 223 F.2d 532, at p. 576), that the Act violates the Fifth Amendment and hence it is unnecessary for him to reach other issues presented in that connection. He agrees with (1) the remand for the purpose outlined in part IV of the opinion this day filed in this case, and (2) the denial of the Party's request for discovery with respect to the witness Scarfetto. He disagrees with the denial as to (1) reports alleged to have been made to the F.B.I. by the witnesses Gitlow and Budenz, and (2) matters in the **Blumberg** case affecting the witness Markward. On the question discussed in part VII of the opinion filed this day—whether the Board's revised report is improper under the mandate of the Supreme Court and this court—it is his position that, since the Board's action in response to the instant mandate may again change the Report, decision should be withheld at this time.

[fol. 2797] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE—  
Filed January 23, 1958

Pursuant to section 14(a) of the Internal Security Act of 1950, petitioner, by its attorneys, moves for leave to adduce the following additional evidence in the administrative proceeding before respondent:

1. All memoranda dictated by the Attorney General's witness, Gitlow, and in the possession of the Department of Justice, purporting to explain or interpret documents which he identified and testified about and which were received in evidence in the administrative proceeding.

2. All transcriptions and memoranda of oral statements made by the Attorney General's witness, Budenz, to the F.B.I. relating to conversations between the witness and Morris Childs and Robert William Weiner during the years 1939 and 1940 concerning the financing of the *Mid-West Daily Record*.

3. All transcriptions and memoranda of oral statements made by Budenz to the F.B.I. concerning a letter allegedly written by Joseph Starobin in the spring of 1945 in San Francisco addressed to the *Daily Worker* describing a conversation between the writer and the French comrades or between the writer and Dimitri Manuilsky.

4. Testimony of Budenz, the F.B.I. agent or agents to whom the oral statements mentioned in paragraphs 2 and 3 were made, and the stenographer, if any, who transcribed such statements, on the subject of whether the transcriptions or memoranda referred to in paragraphs 2 and 3 are substantially verbatim recitals of oral statements made by

Budenz to the F.B.I., recorded contemporaneously with the making of such statements.

[fol. 2798]. 5. All reports written, signed or approved by Budenz concerning the matters described in paragraphs 2 and 3 and in the possession of the Department of Justice.

In support of this motion, petitioner shows the following:

The additional evidence which petitioner seeks leave to adduce is material to this case. Petitioner believes that the statements contained in the memoranda, transcriptions and reports described above contradict or are inconsistent with testimony of Gitlow and Budenz in this proceeding upon which respondent relied in making numerous findings of fact in its Modified Report. Moreover, petitioner believes that the additional evidence which it seeks leave to adduce will establish, particularly when considered in the light of the record as a whole, that the testimony of Gitlow and Budenz in this proceeding is tainted with perjury and should be stricken in its entirety. Petitioner is entitled to adduce the evidence described above under the principles established by the Court's decision of January 9, 1958 and *Jencks v. United States*, 353 U. S. 657.

At the administrative hearing petitioner moved for the production of the Gitlow and Budenz documents. The motions were denied (J.A. 1184-85, S.J.A. 2257-58, S.J.A. 2277-78, J.A. 128). A motion for the production of the same documents was made by petitioner and denied by the Board after the Supreme Court's remand (S.J.A. 2187-89). Later, after respondent, *sua sponte*, had ordered the production of one of Markward's F.B.I. reports for its inspection, petitioner again moved for production or *in camera* inspection of the Gitlow and Budenz documents (S.J.A. 2217-19). This motion was denied by the Board in an order dated December 17, 1956 (S.J.A. 2223).

Petitioner has not heretofore filed a motion in this Court under section 14(a) of the Act to review respondent's order of December 17 and require the production of the Gitlow and Budenz documents in the possession of the F.B.I. because it had reasonable grounds for the belief that this [fol. 2799] Court was of the opinion that section 14(a) was not available to petitioner for that purpose. Petitioner's belief was based on the following facts:



On August 10, 1956, after the remand, the Board denied petitioner's motion to reopen the hearing for the purpose of offering evidence that the Attorney General's witness, Markward (1) testified falsely at the original hearing that she had not been compensated by the F.B.I. for her services as an informer and (2) falsely testified in a security board proceeding of the Department of Defense that Mrs. Annie Lee Moss had been a member of the Communist Party (S.J.A. 2189-90). Thereafter, petitioner filed a motion with the Court pursuant to section 14(a) of the Act for leave to adduce before respondent the evidence with respect to Markward's false testimony including (1) a stipulation entered into by the Department of Justice in another proceeding concerning Markward's compensation for services as an F.B.I. informer and (2) the transcript of the Moss security hearing. Petitioner's motion stated:

"Respondent's denial of petitioner's motion to reopen the proceeding to take evidence that Markward's testimony was tainted violated the standard established by the Supreme Court in its opinion in this proceeding. 351 U.S. 115, 124.

"Petitioner can doubtless secure review of these errors by the Court at the time when review is had of the new or modified findings and the recommendations of the respondent consequent upon its action in expunging the testimony of Crouch, Johnson and Matusow. We believe, however, that section 14(a) provides an alternative procedure for the correction of these errors and that the granting of this motion will expedite the final disposition of the proceeding."

On November 5, 1956, the Court denied petitioner's motion in an order that, in pertinent part, reads as follows:

"ORDERED by the Court that the motion for leave to adduce additional evidence be, and it is hereby denied . . . in so far as it relates to an alleged perjury by the witness Markward in respect to payments made to her by the Federal Bureau of Investigation.

"It is FURTHER ORDERED by the Court that in so far as the motion relates to alleged perjury of Markward,

in respect to Annie Lee Moss, the motion be, and it is hereby, denied . . ."

There was nothing in this order to indicate that the Court [fol. 2800] had considered the merits of petitioner's contention that respondent had erred in denying petitioner's motion. Petitioner therefore understood the order as holding that a motion under section 14(a) was not an appropriate remedy for the correction of the Board's refusal to require the production of documents, and that judicial consideration of the Board's ruling could be obtained only upon review by the Court of respondent's new or modified findings and recommendations. Petitioner's view that the Court's order of November 5, 1956 did not pass upon the merits of petitioner's request has been confirmed by the Court's decision of January 9, 1958 that petitioner is entitled to production of the documents which the motion sought.

Accordingly, when the Board issued its order of December 17, 1956 denying petitioner's motion for the production of the Gitlow and Budenz documents, petitioner had been led to believe by the Court's action of November 5, 1956 that petitioner had no remedy by way of a motion for leave to adduce additional evidence under section 14(a). Therefore petitioner did not file such a motion. It was only when petitioner read the decision of January 9, 1958 herein that it learned that, in the opinion of the Court, a motion for leave to adduce additional evidence is not only an available remedy, but the exclusive remedy for the production of the Gitlow and Budenz documents.

Moreover, the opinion of the Court recognizes that the issue which it so decided presents a close question of law. For the opinion states that "perhaps we misconstrue the opinion of the Supreme Court" in the *Consolidated Edison* case. The opinion also recognizes that, in any event, the Court's holding represents a novel extension of the doctrine [fol. 2801] of that case since, as the opinion states, "The situation here differs somewhat from that in *Consolidated*."

Finally, the filing of this motion now, rather than on an earlier occasion, causes no delay of the proceeding since

the Court has ordered the reopening of the case before the Board for other purposes.

Under all of these circumstances, therefore, this motion should not be rejected as untimely.

Respectfully submitted,

John J. Abt, Joseph Forer, Attorneys for Petitioner.

Certificate of Service (omitted in printing).

[fol. 2811]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

AFFIDAVIT

District of Columbia, ss:

James T. Devine, being first duly sworn, deposes and says as follows:

1. I am an attorney employed by the Department of Justice, and am one of the attorneys for the Attorney General in the proceedings before the Subversive Activities Control Board entitled *William P. Rogers, Attorney General of the United States v. The Communist Party of the United States of America*, Docket No. 51-101. The proceedings are *sub nom. The Communist Party of the United States of America v. Subversive Activities Control Board*, No. 11850, in this Court.

2. At the request of the Chief of the Appeals and Research Section, Internal Security Division, which Section was then in the process of preparing replies to petitioner's petition for rehearing and modification of this Court's opinion of January 9, 1958, and petitioner's motion for leave to adduce additional evidence filed at or about the same time as said petition, I requested the Federal Bureau of Investigation, on January 28, 1958, to furnish us if possible with an affidavit or affidavits by the Bureau agent or agents who conducted the interview or interviews at which Louis

[fol. 2812] Francis Budenz, a witness for the Attorney General in these proceedings, made oral statements, if any, concerning (1) the so-called "Starobin letter" (which Mr. Budenz testified he received from San Francisco in or about May of 1945), wherein Joseph Starobin, the then foreign editor of the *Daily Worker*, stated that D. Z. Manuilsky had said that the American Communist Party should observe more carefully the guidance and counsel of "the French Communists," and (2) a 1939 conversation between one Morris Childs and one Robert William Weiner, to which Mr. Budenz also testified, relating to the possibility of obtaining funds from "abroad" with which to finance the Communist Party newspaper *Midwest Daily Record*. I was advised by the Chief of the Appeals and Research Section that the affidavit or affidavits would be desirable in answering the petition for rehearing and modification and motion for leave to adduce additional evidence, in view of Mr. Budenz' testimony that he orally reported to the FBI on the subjects here in issue and that his report on the so-called Starobin letter was made in the absence of a stenographer, with the interviewing agent merely taking longhand notes (this testimony being the only evidence of record as to the circumstances under which these interviews were conducted). I requested that the affidavit or affidavits to be furnished by the Bureau set forth the circumstances under which the interview or interviews referred to were conducted. In particular I asked that the affidavit or affidavits state the circumstances under which the interview or interviews were conducted from the standpoint of the manner in which Mr. Budenz' statements were recorded, if they were (*i. e.*, whether a stenographer was present recording the statements *verbatim* or substantially so, or whether the agents merely took notes, from which they later wrote up reports in their own language, relying on their recollection, as refreshed by their notes, of what Mr. Budenz had said, etc.). I further asked that the affidavit or affidavits state that no such interview, if such was the fact, had been electrically or mechanically recorded.

3. On January 29, 1958, shortly following my inquiry, I was informed that from December 6 to 12, 1945, which was soon after Mr. Budenz' separation from the Communist

[fol. 2813] Party, Mr. Budenz was interviewed by two Bureau agents, who took notes during the interviews (the first which the Bureau had with Budenz), but that, in addition, the interviews had been, without Budenz' knowledge, mechanically recorded on discs, which were still in existence. I was further informed that no subsequent interviews with Budenz, of which there had been many, had been electrically or mechanically recorded.

4. I have been informed by the Bureau that the aforesaid initial series of interviews were broad in the scope of their coverage, since they dealt with the wide range of Mr. Budenz' experiences and activities in the Communist Party, and that some of the subsequent interviews were devoted in large part to more detailed inquiries of Mr. Budenz concerning matters and subjects which he may have only mentioned, or touched on but briefly, in the first interviews.

5. Among the many matters and subjects mentioned by Mr. Budenz in the course of the aforesaid disc-recorded interviews are the general subjects or areas to which the specific subjects hereinabove referred to, *viz.*, the so-called "Starobin letter" and the Childs-Weiner conversation relative to the possibility of obtaining funds from "abroad" for the *Midwest Daily Record*, are germane.

6. The affiant had no knowledge, and upon information and belief neither Mr. Budenz nor any attorney who has participated in the preparation or presentation of this case to the Subversive Activities Control Board or to the courts had any knowledge, prior to January 29, 1958, of the existence of the aforesaid mechanical recordings or of the fact of the making of such recordings.

Further affiant sayeth not.

James T. Devine, Attorney, Department of Justice.

Subscribed and sworn to before me this 5th day of February, 1958.

Emily McC. Ireland, Notary Public, D. C. My commission expires February 28, 1959.

(Seal)

[fol. 2814] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

SUPPLEMENTAL MOTION FOR LEAVE TO ADDUCE ADDITIONAL  
EVIDENCE—Filed February 14, 1958

Supplementing its pending motion for leave to adduce additional evidence, petitioner, by its attorneys, moves pursuant to section 14(a) of the Internal Security Act of 1950 for leave to adduce the following additional evidence in the administrative proceeding before respondent:

1. All recordings made by the FBI of interviews with Budenz on December 6-12, 1945, which relate to the subject matter of his testimony in this proceeding.

2. All memoranda and notes made by agents of the FBI of subsequent interviews with Budenz relating to the subject matter of his testimony in this proceeding.

3. Testimony of Budenz and of the FBI agents who interviewed him or prepared recordings, memoranda or notes of the interviews, concerning the recordings, memoranda and notes referred to above and Budenz' testimony in this proceeding.

Petitioner also moves that the Court modify the terms of its remand so as to order the Board to require the Attorney General to make available to petitioner the foregoing recordings, documents and witnesses.

In support of this motion, petitioner shows the following:

The additional evidence sought to be adduced is material to this case. *Jencks v. United States*, 353 U. S. 657. Petitioner believes that statements made by Budenz in his FBI interviews will contradict or be inconsistent with [fol. 2815] testimony of Budenz upon which the Board relied in making numerous findings in its Modified Report. Petitioner also believes that the additional evidence, particularly when considered in the light of the record as a



whole, will establish that Budenz' testimony is tainted with perjury and should be stricken in its entirety.

Petitioner has not heretofore sought production of a recording or transcription of Budenz' December 6-12, 1945 interviews with the FBI because it had been led to believe by testimony of Budenz that no such recording or transcription had been made. Moreover, the hearing panel precluded petitioner from adequately exploring the matter in cross-examination of Budenz. And finally, the attorneys for the Department of Justice and the Board have, prior to February 7, 1958, consistently represented to the Court, contrary to the true facts, that there were no verbatim reproductions of Budenz' statements to the FBI.

With regard to Budenz' testimony and the panel's blocking of full exploration as to records of his FBI interviews, we refer to the following excerpts from the cross-examination of Budenz (S.J.A. 2277. R. 14003-4, 14120-22):

"Q. [By Mr. Marcantonio.] Prior to November 22, 1946, how much time did you spend with the FBI? A. I can't say that exactly, but I should say there were visits in New York in 1946. I should say 100 hours or more. \* \* \*

"Q. Can you give us approximately how many interviews and visits this constituted? A. There were a number of days on these first two visits that ran over several days, and then there were intermittent connections with the FBI. Then in the fall I had a number of visits from the FBI.

"Q. During these visits, all of these numerous visits that took place prior to November 22, 1946, which was the date of your first public appearance, did you give any written reports to the FBI? A. No sir.

[fol. 2816] "Mr. Paisley: I object. I think we have had enough latitude on this business now.

"Mr. Brown: I sustain the objection.

"By Mr. Marcantonio:

"Q. Were your talks to the FBI reduced to writing?

"Mr. Paisley: The same objection.

"Mr. Brown: Sustained.

"Q. . . . Prior to your appearance before the Un-American Activities Committee, did you tell the FBI about the Starobin letter? A. That I wouldn't recall.

"Q. You don't recall that. You spent 100 hours with the FBI, or more, you said, before you went there?

A. Yes, but the FBI asked me a very great number of questions, and I answered their questions. . . .

"Q. Did you give it to them after your appearance before the Un-American Activities Committee? When I say 'them' I mean the FBI. A. I am satisfied I gave it to the FBI. I couldn't say definitely, but the FBI question me about everything I write and say, and also about many other things, and I answer their questions.

"Q. Were your answers reduced to writing? A. As a matter of fact, I do know now, since you mention it, that I did give this to the FBI.

"Q. In writing? A. No, not in writing.

"Q. Was it taken down by a stenographer? A. No, not by a stenographer. They never do that except in rare cases.

"Q. Was a report written up and then shown to you [fol. 2817] afterwards? A. No. That never happens.

"Q. So all you did was simply have an oral conversation about this incident? A. Yes, that is all."

Respondent in its brief to this Court following the remand represented that no verbatim record had been made of Budenz' interviews with the FBI. It stated:

"What petitioner refers to as 'reports' by Budenz were at most written summaries, prepared by an agent or agents of the FBI, relating matters *orally reported* to the FBI *long after the happening of the events reported*<sup>13</sup> (some six years afterward in the case of one of the 'reports')—that relating to his 1939 conversation

<sup>13</sup> The record does not definitely establish even the existence of such FBI-prepared summaries. Their existence is at most an inference based on the usual practice of the FBI of making written records of matters of significance relating to it by informants." (Br., p. 18. Emphasis in original.)

with Weiner and Childs regarding the interruption of funds from abroad).

"The record is clear that he [Budenz] made no written reports to the FBI during the period of approximately six months when he first gave information, although he spent over a hundred hours in interviews. (S.J.A. 2275-2277.) With respect to the incident of the Starobin letter, Budenz testified that he had nothing more than an oral conversation about this incident with the FBI<sup>50</sup>. (R. 14122) . . ."

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<sup>50</sup> Not only does the specific statement upon which petitioner relies (J. A. 1184-1185) show that Budenz testified simply that he 'told' the FBI about this incident, but the record, at pp. 14121-14122, shows that no such thing as a written 'Budenz report' exists." (Br. p. 46.)

For like representations, see Respondent's Brief, p. 48, and respondent's memorandum of August 2, 1957 in opposition to petitioner's memorandum regarding the applicability of *Jencks v. United States*.

Accordingly, it was not until after February 7, 1958, the date when respondent filed its memorandum in response to petitioner's petition for rehearing, that petitioner learned that, contrary to Budenz' testimony and respondent's representations, there is a verbatim record of interviews of Budenz with the FBI. Furthermore, the information contained in [fol. 2818] contradicting respondents' representations was at all times in the hands of the FBI. Yet, according to the affidavit of James T. Devine appended to respondent's memorandum, the FBI did not inform the attorneys for the Board or the Department of Justice of the true facts, and those attorneys did not attempt to verify the facts before making their representations to the Court.

Petitioner is likewise entitled to production of the FBI memoranda described in paragraph 2 above, because, as the Devine affidavit states, they "were devoted in large part to more detailed inquiries of Mr. Budenz concerning matters and subjects which he may have only mentioned, or touched on but briefly, in the first [recorded] interviews."

Under the peculiar circumstances stated above, and in light of the indications of perjury by witnesses for the Attorney General, including the three whose testimony had to be entirely stricken, the interests of justice require that petitioner be given access to all of Budenz' prior statements to the FBI, recorded or in memorandum form, concerning matters as to which he testified at the administrative hearing, and that petitioner be permitted to explore inconsistencies between such statements and Budenz' testimony by examining Budenz and the FBI agents to whom he talked.

Respectfully submitted,

John J. Abt, Joseph Forer, Attorneys for Petitioner.

Certificate of Service (omitted in printing).

[fol. 2819]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

Before: Prettyman, Bazelon and Danaher, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING OR MODIFICATION  
—April 11, 1958

Upon consideration of the petition for rehearing or modification of the judgment of this Court and of respondent's answer, it is

Ordered by the Court that the petition for rehearing or modification be, and it is hereby, denied.

Per Curiam.

Dated: April 11, 1958

Circuit Judge Bazelon dissents, as per the memorandum filed today.

[fol. 2820]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

N. 11,850

[Title omitted]

Before: Prettyman, Bazelon and Danaher, Circuit  
Judges, in Chambers.

ORDER DENYING MOTION FOR LEAVE TO ADDUCE ADDITIONAL  
EVIDENCE, ETC.—April 11, 1958

Upon consideration of petitioner's motion for leave to  
adduce additional evidence and of petitioner's supple-  
mental motion for leave to adduce additional evidence,  
and of respondent's answers, it is

Ordered by the Court that the aforesaid motions be,  
and they are hereby, denied, except insofar as they per-  
tain to certain statements of Budenz as specifically set  
forth in the memorandum accompanying this order.

Per Curiam.

Dated: April 11, 1958

Circuit Judge Bazelon dissents, as per the memoran-  
dum filed today.

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[fol. 2821] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

MEMORANDUM TO ACCOMPANY ORDERS ON PETITIONER'S  
MOTIONS TO ADDUCE ADDITIONAL EVIDENCE AND THE  
PETITION FOR REHEARING—April 11, 1958

Before: Prettyman, Bazelon and Danaher, Circuit  
Judges, in Chambers.

We have before us two motions of petitioner, the Communist Party of the United States of America. One is for leave to adduce additional evidence and the other is supplemental to the first one.

As far as the motions relate to statements alleged to have been made by the witness Gitlow, we adhere to the views expressed in our opinion promulgated January 9, 1958, and to the ruling there made. We think the denial of the claim for the production of that material was proper.

As far as the motions relate to statements given to the Federal Bureau of Investigation by the witness Budenz, the motions are granted. We adopt for present purposes the definition of "statements" contained in Public Law No. 85-269, 71 Statute 595 (September 2, 1957), not because the statute is binding in this proceeding but because it embodies succinctly the rule of law we think is [fol. 2822] applicable. The Board will therefore direct the Attorney General to produce all statements made by the witness Budenz to the Federal Bureau of Investigation concerning subjects as to which Budenz testified; specifically the Starobin letter and the conversation with Weiner. As to mere memoranda, including those recorded without his knowledge, made by third persons, including Federal Bureau of Investigation agents, not produced as witnesses,



concerning conversations with Budenz, we adhere to the views expressed in the opinion of January 9, 1958.

The Party contends that our opinion of January 9, 1958, is not clear in that in it we said, "On all other points (with the exception noted under Part VII) we affirm the Board", thereby implying, says the Party, that we affirmed the Board's findings of fact. The contention is obviously without merit. We remanded the case for the production of material demanded for cross-examination purposes, and this production clearly might result in a re-evaluation of some testimony and a re-examination of some findings. Under those circumstances we certainly did not intend to affirm at that same time the findings of fact theretofore made. We affirmed the Board on its conclusions of law except insofar as we noted disapproval of those conclusions. No clarification seems necessary.

Petitioner's petition for rehearing and modification of the opinion of the Court will be denied.

Per Curiam.

Dated: April 11, 1958

EB P JAD

Judge Bazelon adheres to his views heretofore expressed in this case.

[fol. 2831] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

Before: Prettyman, Bazelon and Danaher, Circuit  
Judges, in Chambers.

## PER CURIAM ORDER—June 16, 1958

The Board asks us to clarify our order of April 11, 1958.

The Party is entitled to the production of statements made to the F.B.I. by Budenz, in so far as it demanded such statements at the original hearing before the Board. It could not make a valid blanket demand for any and all statements made to the F.B.I. by Budenz concerning any (unspecified) subject about which he testified. Such a demand would be merely a fishing expedition to see what might turn up, a procedure condemned by the Supreme Court in *Jencks v. United States*, 353 U.S. 657 (1957). And, further, the Party could not in subsequent ancillary proceedings make new demands for further material for cross-examination. Proceedings such as these cannot be prolonged indefinitely by successive demands. The F.B.I. statements demanded by the Party at the hearing concerned the Starobin letter and the Weiner conversation. It subsequently developed that such statements existed. We intended to order them produced. We intended to deny the blanket demand for production of any and all other statements by Budenz on any and all topics concerning which he testified.

As to the Defense Department security hearing on Moss, we intended to hold that the Party is entitled to see Markward's testimony, given in that proceeding, concerning Moss. It is not entitled to more. It is not entitled to retry the Moss matter. We meant to direct the Board in accordance with the principles of the Jencks case, and no more than that.

Our order and memorandum of April 11, 1958, are to be deemed to be in accordance with this order.

Per Curiam.

Dated: June 16, 1958.

[fol. 2832] BAZELON, *Circuit Judge*, dissenting: I think our order and memorandum of April 11, 1958, recognized that the Party was entitled to all of Budenz' statements to the F.B.I. upon the subjects of his testimony in this proceeding. It is true that at the original hearing the Party

limited its request to the F.B.I. statements concerning the Starobin letter and the Weiner conversation. But the Party says that "[it] had been misled—by Budenz' testimony, by the hearing panel's blocking of cross-examination seeking to develop the facts, and by representations made by respondent in its brief and a memorandum to this Court—into believing, contrary to the fact, that there did not exist a verbatim record of interviews of Budenz with the FBI." [Petitioner's answer, filed May 29, 1958] This allegation is not denied. Indeed the record supports it. Under the circumstances the Party is now entitled to the Budenz statements, the existence of which has come to light since the original hearing.

I also think that petitioner is entitled to so much of the Moss Security Hearing Record as is necessary for the opportunity to show not only that Markward had given false testimony regarding Mrs. Moss but that the Defense Department believed it to be false.

[fol. 2833]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE  
—Filed April 14, 1959

Pursuant to section 14(a) of the Internal Security Act of 1950, petitioner, by its attorneys, moves for leave to adduce the following additional evidence in the administrative proceeding before the respondent: All statements, as defined in 18 U.S.C. 3500, in the possession of the Attorney General which were made by witnesses who testified for the Attorney General at the administrative hearing and which relate to the subject matters of their testimony.

The grounds for this motion are as follows:

1. Petitioner moved the Board for the production of the foregoing statements upon the second remand of this proceeding, and its motion was denied (2d S.J.A. 2338-39, 2345-47).

2. Petitioner did not move for the production of these statements at the original administrative hearing. If it had done so, it clearly would have been entitled to their production. See the Court's second opinion in this case, 254 F. 2d 314, 328-329.

3. However, the Board's hearing panel, in a ruling thereafter affirmed by the Board, denied petitioner's motion for the production of statements made by the Attorney General's first witness, Gitlow, on the erroneous ground that petitioner was not entitled to the production of such statements, at least unless it first showed a contradiction between the testimony and the statements (S.J.A. 2255-58; J.A. 128; R. 2886).

[fol. 2834] 4. Petitioner submits that it was not required to continue to make fruitless motions for the production of statements once the hearing panel had established the principle of denying such motions. We recognize that a majority of the Court held otherwise in its order of June 16, 1958 in this proceeding. We renew the matter because the question at issue is now pending before the Supreme Court in a case which has been scheduled for argument during the week of April 20, 1959. *Rubin v. United States*, No. 437, October Term, 1958, cert. granted December 8, 1958.

5. Petitioner preserved the point in its petition for review and brief in this Court in the proceeding to review the initial order of the Board. See the second opinion of the Court, 254 F. 2d at 321-322. Petitioner again preserved the point by incorporating it in the questions presented and statement of points in its brief in this Court following the first remand. The point is now appropriately

raised by this motion. See the second opinion of the Court, 254 F. 2d at 323.

Respectfully submitted,

John J. Abt, Joseph Forer, Attorneys for Petitioner.

Received service April 14, 1959.

George R. Gallagher, Attorney for Respondent.

[fol. 2835]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board and on Further Hearing Following Further Proceedings before the Subversive Activities Control Board pursuant to Remand by this Court on January 9, 1958

*Mr. John J. Abt*, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, and *Mr. Joseph Forer* for petitioner.

*Mr. George R. Gallagher*, General Counsel of the Subversive Activities Control Board at the time of argument, with whom *Mr. Frank R. Hunter, Jr.* (now General Counsel) and *Mr. Leo M. Pellerzi*, Assistant General Counsel, Subversive Activities Control Board, and *Messrs. Kevin*

*T. Maroney and Philip R. Monahan*, Attorneys, Department of Justice, were on the brief, for respondent.

Before Prettyman, Chief Judge, and Bazelon and Danaher, Circuit Judges.

[fol. 2836] OPINION—Decided July 30, 1959

Prettyman, Chief Judge: A Modified Report of the Subversive Activities Control Board following a second remand of this case is now before us for review. We affirmed the original report,<sup>1</sup> but the Supreme Court remanded for reconsideration in the light of allegations that the testimony of three witnesses was perjured.<sup>2</sup> The Board struck the testimony of those witnesses, reexamined its findings and issued a Modified Report. We reviewed that Modified Report and remanded the case for the production of reports made by the witness Markward to the F.B.I. upon certain matters as to which she had testified, and for reexamination of certain findings as to which an exhibit of the Government had been erroneously cited and quoted. Thereafter it developed that the F.B.I. had made recordings of statements made to its agents by the witness Budenz, a fact not known to Government counsel at the time of the earlier proceedings, and in a supplemental order we directed that this matter be included in the remand and that statements made by Budenz to the F.B.I. on certain matters be produced to the Party. The Board followed the instructions upon the remand, reexamined its findings and conclusions, made changes, and issued its Modified Report upon Second Remand, now before us.

The Party iterates all points of law made by it upon the original consideration of the case by us and repeated by it upon our second consideration. Upon those points we adhere to the views heretofore expressed by us. The Party also asserts, as it has consistently asserted in both of the prior considerations, that many of the findings of the Board are not supported by a preponderance of the consideration in the light of allegations that the testimony of three witnesses was perjured.<sup>2</sup> The Board struck the

<sup>1</sup> *Communist Party of U. S. v. Subversive Act. Con. Bd.*, 96 U.S. App. D.C. 66, 223 F.2d 531 (1954).

<sup>2</sup> 351 U.S. 115 (1956).



evidence; and it emphasizes that the present evidence in the record, reduced as it is by the striking of parts of the [fol. 2837] original evidence and by the conclusions of the Board now holding unacceptable certain other testimony, does not show a preponderance in support of the findings. We have examined the Modified Report in the light of these averments and think the findings are amply supported. The Party also makes specific points as applicable to the Report presently under review. We now examine those points.

## I

In our original opinion in this matter we struck,<sup>3</sup> as not supported by a preponderance of the evidence, a finding respecting the purposes of the secret practices of the Party. The Board has let the finding remain in its Modified Report on Second Remand. The Party says the court must therefore again remand to the Board, for an administrative redetermination in the light of the striking of this finding. We do not see why we should do so. We did not find it necessary to reverse the order of the Board, or to remand, when we first struck the finding. No new evidence on the point has been added since then, and so we adhere to our first conclusion, but the necessity for remand is now no greater than it was. And we think the Board is entitled to adhere to its view on the point until our view of it has been tested in the Supreme Court.

## II

Government's witness Gitlow was expelled from the Party in 1929. In about 1940 he delivered to the F.B.I. all documents in his possession respecting the Party. He dictated, over a period of time, memoranda explaining the documents. On the witness stand before the Board he identified and explained the documents. The Party moved for production of the 1940 memoranda. The motion was denied. [fol. 2838] In our opinion of January 9, 1958,<sup>4</sup> our second

<sup>3</sup> *Supra* note I, 96 U.S. App. D.C. at 109-110, 223 F.2d at 574-575.

<sup>4</sup> *Communist Party of U. S. v. Subversive Act. Con. Bd.*, 102 U.S. App. D.C. 395, 254 F.2d 314 (1958).

opinion in the matter, being after the proceedings before the Board consequent to the remand by the Supreme Court, we held, in accordance with our reading of the opinion in *Consolidated Edison Co. v. National Labor Relations Board*,<sup>5</sup> that the point was not available to the Party, since it had not pursued its remedy when its motion to produce was denied by the Board at the original hearing. That remedy was a motion to adduce additional evidence under Section 14(a) of the Act.<sup>6</sup> After our decision the Party made such a motion in this court. We denied it. The Party now argues the case must be remanded for receipt of the Gitlow memoranda, since, it says, it has remedied the procedural defect we found in its original position. But we think a litigant cannot cure procedural defects *nunc pro tunc* after an appellate court has passed upon his contentions in the matter. Litigants frequently must make tactical decisions in the course of a trial. Also they frequently make mistakes. But, after the resultant judgment has been reviewed upon appeal, they cannot unilaterally cure their mistakes by offering to take some missing step. So to do would be to prolong indefinitely almost all litigation. Analogies are unreliable support for reasoning, but we suggest an illustration. If a litigant in an ordinary lawsuit fails to make a motion, such as to suppress, or for a mistrial, or for a directed verdict, and the appellate court holds he was not entitled to certain relief because he had not asked for it by timely motion, he cannot thereafter proffer the motion and thus correct the defect and acquire a right to retrial. Failure of a trial tribunal to grant a motion not made is not reversible error, and appellate courts rarely [fol. 2839] remand for the correction of such omissions by parties litigant. No circumstance requiring such an extraordinary step by us is present here.

### III

With its brief upon this appeal the Party filed a motion to adduce as additional evidence all statements filed by

<sup>5</sup> 305 U.S. 197 (1938).

<sup>6</sup> 64 Stat. 1001 (1950), as amended, 50 U.S.C.A. § 793(a).

all witnesses who testified for the Attorney General before the Board. This is the third time this case has been here. The motion comes too late, and in any event it is not supported by any authority respecting the production of such documents: In the *Jencks* case the Supreme Court quoted with approval from its opinion in *Gordon v. United States*,<sup>7</sup> disapproving fishing expeditions.

#### IV

Upon the remand after our opinion of January 9, 1958, the Board struck the testimony of the witness Budenz in respect to the Starobin letter and the Weiner conversation. The Party says it should have struck all of Budenz's testimony, upon either or both of two grounds, (1) all his testimony was tainted with perjury and (2) Budenz being ill after his statements to the F.B.I. on the two matters mentioned had been produced, the Party was denied the right to cross-examine him in the light of those statements. We agree with the Board on the point. Without elaborating, it is enough to say we have examined Budenz's statements again and think his testimony is not shown to have been false or tainted with perjury. It seems to us that the various accounts given by him upon different occasions, under different questioning, of the Starobin and Weiner incidents bear a solid similarity in essentials and differ no more than truthful accounts under such conditions may well differ—[fol. 2840] indeed, if truthful, do often differ—in details, in expressions of speech, and in passing emphasis.

The disadvantage suffered by the Party, by reason of Budenz's illness and unavailability for cross-examination after the Starobin and Weiner documents (reports to the F.B.I.) had been produced, was cured by the Board's striking Budenz's testimony on those two matters. We see no necessity for striking more of his testimony on account of this shortening of his cross-examination. The Party says if it had been able to cross-examine in the light of the re-

<sup>7</sup> *Jencks v. United States*, 353 U.S. 657 (1957).

<sup>8</sup> 344 U.S. 414 (1953).

perjury as to destroy all his testimony. We think not.ports it might have been able to develop such a taint of Budenz had already been cross-examined extensively on these subjects. The possible conflicts between his testimony and his F.B.I. reports can readily be discerned, the reports having been produced. Those discrepancies are not such as to indicate perjury, much less the habit of perjury essential to be shown to taint all the witness's testimony. By securing a striking of the testimony on the two matters directly involved, the Party achieved all it could hope to achieve from these reports. •

## V

The Party says the Board should be required to strike all the testimony of the witness Markward, because her sworn statements concerning the Frankfeld incident and her testimony about her payments from the F.B.I. were false. The Board struck her testimony as to those two matters but declined to strike the rest of her evidence. We think the statements about the Frankfeld matter were not demonstrated to be false. She testified to her understanding of certain statements by one Thorez, by the Americans, Dennis and Foster, and by Frankfeld. In none of these statements were the words "not bear arms against the Soviet Union" used, but she gave that meaning to such expressions as "American Communists would oppose such [fol. 2841] 'an unjust, aggressive, imperialist war' and would work 'with all democratic forces' to bring that war to an end." To us the meaning she gave was a permissible inference from the face of the words.

The Party says Markward's testimony about the payments made to her by the F.B.I. was so false as to taint her entire testimony and to require that all of it be stricken. It was established from the beginning of this case that Markward was a paid informant for the Government. She characterized the payments she received as expense money, including within that term amounts expended by her for certain ordinary living expenses while she was working for the Government. She was vague in her recollection of exact amounts and dates, but she was specific in saying she received no salary and had no formal financial arrangements.

The F.B.I. records of its payments to her were produced to the Party. Upon the basis of those accounts the Board held that Markward's testimony on the matter was "not acceptable", and it took this fact into account in evaluating her entire testimony. The Board concluded that Markward's testimony on all matters "should be assayed with caution." The Board also pointed out that "findings based upon her testimony are minimal; and the effect of her entire testimony upon the Board's Modified Report is inconsequential." We will not disturb these conclusions of the Board. The credibility of witnesses must be left largely to the trier of the facts; this is the rule as to both trial courts and administrative agencies. And in this connection it should be remarked that the definition of "expenses" is a vague and uncertain prescription. An expense under some circumstances is not an expense under others. A businessman's dinner at home or in his home town is not an expense; when he is on a business trip, it is one; and so on *ad infinitum*, as the casebooks readily show.

Moreover, in respect to the striking of both the Budenz testimony and the Markward testimony, we know of no [fol. 2842] rule that the trier of facts is required to disregard all the testimony of a witness whom he finds to have testified falsely in one respect. He may do so, but he is not required to do so. Instructions to juries on the point are commonplace in the courtroom. Such instructions are always that the jury *may*—never that it *must*—disregard the testimony of a witness whom it believes to have testified falsely on a material matter as to which he could not be mistaken. A rule of law compelling the trier of facts to disregard all the evidence of such a witness would not only be a revolutionary doctrine in our jurisprudence but a wholly undesirable doctrine.

## VI

By concentrating on segments of the evidence and expanding their importance by discussion, to the exclusion of all the rest of the evidence, the Party seeks to have us believe there are no other significant features in the record. But the facts beyond dispute are that there is a Commu-

nist Party in Europe, based upon Marxism-Leninism, and in power in Soviet Russia; that our present petitioner was for years a member of the Communist International, and its separation from that organization was not accompanied by a repudiation, either of objectives or of methods; that it is by its own choice named the Communist Party of the United States of America, a self-imposed description not to be ignored without reason; that it once forsook the line laid down by the Communist Party abroad but, upon being severely brought to task by a leading European Communist in an open letter to Communists, reorganized itself, even to the extent of expelling its erring leader, and went back to the line; and that, save for that period of waywardness, it has never differed from the program and policy of the Communist Party abroad and has always adhered to that program and policy even in sharp changes. These major characteristics in the facts cannot be overlooked.

[fol. 2843] Guilt by association is a concept we will not even entertain for consideration, but this proceeding is not to determine guilt. It is to ascertain characteristics, and association is surely one of the best-known sources of information about characteristics. Many proverbs attest to its common acceptance—not as proof of the commission of any certain act but as evidence of character and probable characteristics. Of course such *prima facie* indications can be readily and conclusively contradicted by facts. But an uncontradicted series of facts such as we have outlined as being in this record is admissible and acceptable evidence of characteristics, policy and program. One who attaches himself by intellectual affiliation to a cause, assumes the name of the cause, puts on the habiliments of the cause, and adheres to the course of the cause is not mistreated if it be inferred *prima facie* he is part of the cause. In the case at bar there is additional specific evidence. The preponderance of all the evidence supports the conclusion of the Board. Its order will be

*Affirmed.*

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BAZELON, Circuit Judge, concurring in part and dissenting in part: Notwithstanding my disagreement with the Court's two earlier opinions in this case and its orders



of April 11, 1956 and June 16, 1958, I treat them as controlling in considering the points discussed by the majority in the present opinion.

As to Point I, I would reverse and remand because of the Board's violation of our original opinion of December 23, 1954, 96 U.S.App.D.C. 66, 109-10, 223 F.2d 531, 574-75 (1954). A finding which we there ordered stricken is now still relied on by the Board.

[fol. 2844] As to Points II, III and V (as to Markward), I concur only in the result reached by the majority.

As to Point IV, I would reverse and remand. By fault of the Government, the Party was precluded from obtaining use of Budenz's statement for purposes of cross-examining him while he was still available. Without such cross-examination the Party is denied its right to show the extent, if any, to which the rest of Budenz's testimony is tainted. If, upon the remand I would order, Budenz were not available, his entire testimony would have to be stricken.

In light of my disposition of Points I and IV, I do not reach consideration of Point VI—namely, whether the Board's order is supported by a preponderance of the evidence.

[fol. 2845]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

On Petition for Review of Order of the Subversive Activities Control Board and on Further Hearing Following

Further Proceedings before the Subversive Activities Control Board pursuant to Remand by this Court on January 9, 1958.

Before: Prettyman, Chief Judge, and Bazelon and Danaher, Circuit Judges.

JUDGMENT—July 30, 1959

This case came on to be heard on the record from the Subversive Activities Control Board and on the Modified Report issued by the Board following the second remand of this case by this court on January 9, 1958, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the Subversive Activities Control Board on review herein is affirmed.

Per Chief Judge Prettyman.

Dated: July 30, 1959.

Separate opinion by Circuit Judge Bazelon concurring in part and dissenting in part.

[fol. 2849]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD, Respondent.

Before: Prettyman, Chief Judge, Bazelon and Danaher,  
Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING AND AMENDING  
OPINION—August 27, 1959

Upon consideration of the petition for rehearing, it is  
Ordered by the court that the petition for rehearing is  
denied.

It is Further Ordered by the court that the words  
"the foreign leaders" appearing in the sixteenth line of  
the complete paragraph on page eight of the opinion of  
this court entered herein July 30, 1959 are stricken and  
that the words "a leading European Communist in an  
open letter to Communists" are substituted therefor.

Per Curiam

Dated: August 27, 1959

Circuit Judge Bazelon did not participate in the portion  
of the order amending the opinion of this court.

[fol. 2853] Clerk's Certificate to foregoing transcript  
(omitted in printing).

[fol. 2854] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

MOTION TO REMAND PROCEEDING TO BOARD—  
Filed January 11, 1957

The petitioner, by its attorneys, moves that the Court  
remand the proceeding to the Board with directions that  
the Board either (1) issue findings and recommendations in  
conformity with section 14(a) of the Subversive Activities  
Control Act of 1950, or (2) vacate the Board's registration  
order of April 20, 1953 and reopen the administrative pro-  
ceeding.

In support of this motion, petitioner shows the following:

1. The registration order of the Board was affirmed by this Court (96 App. D. C. 66, 223 F. 2d 531). The Supreme Court reversed (351 U. S. 115), holding that this Court had erred in denying petitioner's motion under section 14(a) of the Act for leave to adduce additional evidence that three of the Attorney General's witnesses, Crouch, Johnson and Matusow, were perjurers. The case was remanded to the Board either to hold a hearing on petitioner's allegations with respect to the three witnesses or to assume the truth of the allegations and expunge the witnesses' testimony, and in either event to "reconsider its original determination in the light of the record as freed from the challenge that now beclouds it."

[fol. 2855] 2. While the case was pending on remand, the Board and this Court denied motions by petitioner for leave to introduce evidence of events which occurred after the registration order had been issued (and, for the most part, after the case had been submitted to the Supreme Court), such evidence having been offered to prove that petitioner was not a Communist-action organization at the time of the administrative hearing. The Board, in denying petitioner's motion, stated that "the proceeding is remanded pursuant to section 14(a) of the Act" (p. 17244 of Record now in this Court) and ruled: "As the nature of the Board's function under this Act affords no basis to act beyond the terms of the remanding opinion [of the Supreme Court], we are of the view that the reopening of the hearing to take the proffered additional evidence is beyond our authority in the premises" (Record, p. 17245).

3. The Board expunged the testimony of Crouch, Johnson and Matusow without a hearing on petitioner's allegations concerning these witnesses. It has now issued and filed with the Court a Modified Report, accompanied by a recommendation that the Court affirm the Board's original registration order of April 23, 1953. The recommendation recites that it is made pursuant to section 14(a) of the Act. Section 14(a) provides that after a remand for the taking of additional evidence, "The Board may modify its findings as to the facts *by reason of the additional evidence so taken*, and it shall file such modified or new findings . . . and its

recommendations, if any, with respect to action in the matter under consideration."

4. A comparison of the Modified Report demonstrates that the Board has not complied with section 14(a). It has not confined itself to modifying its findings or making new findings "by reason of the additional evidence" (con-[fol. 2856] sisting of the allegations of petitioner, assumed to be true, which resulted in the expunging of the testimony of Urouch, Johnson and Matusow). Nor has the Board confined itself to the terms of the Supreme Court mandate which directed it only to "reconsider its original determination in the light of the record freed from the challenge that now beclouds it." Instead, the Board has made a wholesale modification and revision of its findings for reasons not connected to or required by the expunging of the stated testimony. Though the Modified Report itself states (p. 5) that "the expunction left no substantial gaps in the evidence," the Modified Report is a new document which differs from the original Report in many vital respects. These differences include the following which are not connected to or required by the additional evidence or the expunging of the testimony of the three tainted witnesses:

A. The omission of findings and evidence on which the original Report relied. To list only a few examples: The Modified Report omits the Board's earlier finding that petitioner's policies are formulated and its activities conducted pursuant to Soviet directives. (Compare original Report, J. A. 79, with Modified Report, p. 149). The findings of the Modified Report as to "reporting" and "secret practices" are materially different from those originally made by the Board. (Compare original Report, J. A. 98, 117, with Modified Report, pp. 178, 180 ftn. 1, 193.) The Modified Report omits the subsection of the original Report (J. A. 77-8) entitled "Ideological Versus Political Aims," including the finding of the original Report (J. A. 77) that, "The record shows that [petitioner] has campaigned for and championed reforms such as shorter working hours, nonmilitarization of youth and Negro rights" (J. A. 77).

B. Reliance on evidence and findings which were not con-[fol. 2857] tained in the original Report. For example: The

Modified Report contains a finding on "the role of the vanguard Communist Party" (p. 40) and an entire section entitled "Effectiveness of World Communist Movement" (pp. 82-90), neither of which appeared in the original Report. The Modified Report's treatment of "secret practices" relies on numerous evidentiary items not relied on in the original Report (Cf. Modified Report, pp. 179-193, with original Report, J. A. 105-117). The Modified Report relies on certain events which occurred after issuance of the registration order and original Report, namely certain convictions under the Smith Act (Modified Report, p. 197, fn.).

C. The Modified Report revises the Board's original analysis and constructs new theories of the case. The ultimate finding of the original Report was supported exclusively by evidence assembled and findings made under the eight criteria of section 13(e). In the Modified Report, on the contrary, the Board places primary reliance on evidence and findings which it does not claim are relevant to the 13(e) criteria, but which it advances as direct proof of the ultimate fact to be determined, i.e., whether petitioner is a Communist-action organization within the section 3(3) definition. The Board's new approach to the case is embodied in sections 1, 3 and 4 of the Modified Report. Its present theory of the case, expressed in the "Summary" at pages 203-4 of the Modified Report, is not that of the original Report. The reaching of this new theory was achieved by analyses of evidentiary material and by findings thereon that are vastly different from the original analyses and findings and also involves the use of evidentiary material not relied upon in the original Report. To cite but one example, the original Report treated the subject of "Marxism-Leninism" as proof that the "directives and policies" criterion of section 13(e)(1) was met. It found that "Marxism-Leninism . . . has been promulgated and issued by the Soviet Union as the overall philosophy, authoritative rules, di-[fol. 2858] rectives and instructions governing the world Communist movement" (J. A. 78). It was primarily on the basis of this finding that the Board concluded that petitioner acted pursuant to Soviet directives within the meaning of section 13(e)(1) (J. A. 79). The Modified Report discards



both this finding and the thesis that Marxism-Leninism is a series of Soviet directives to petitioner. Instead, it treats Marxism-Leninism not as relevant to the "policies and directives" criterion of section 13(e)(1), but as a subject which, by a new analysis, is direct evidence that petitioner meets the section 3(3) definition.

5. We do not question the power of the Board to revise its Report and findings in any way it chooses, provided that it employs the appropriate procedure to do so and conforms to the requirements and consequences attendant upon the appropriate procedure. The only modifications of Board findings that are authorized by section 14(a) are such modifications as are required by additional evidence taken pursuant to that section. If the Board desires to modify its findings in other respects, as it has modified them in its Modified Report, then the appropriate procedure requires the Board first to vacate its original registration order. The Act does not authorize the Board to attempt to support an order entered in 1953 on the bases of analyses, findings, conclusions, and afterthoughts newly constructed in 1956.

6. Our objections to the Board's procedure involve important jurisdictional and substantive questions.

The Court acquired jurisdiction to review this proceeding by virtue of a petition for review filed by petitioner under section 14(a) of the Act on June 17, 1953. This petition, in accordance with the Court's rules, set forth the grounds on which petitioner sought relief. The Board has [fol. 2859] now extensively revised its findings, conclusions and theories, but petitioner has not filed, and in the absence of a new registration order cannot file, a new petition for review. The Board has created a new case, whereas the Court has jurisdiction only of the old case.

Furthermore, as noted above, the Board denied petitioner's motion to adduce additional evidence of subsequent events on the grounds that it had no power to go beyond section 14(a) and the Supreme Court's mandate. If the Board now desires to exercise jurisdiction beyond such confines in an effort to correct errors and inadequacies of its original Report, it is at liberty to do so. But, as we have shown, it is then first required to vacate its registration

order of April 23, 1953, and thereafter to enter a new order based on the new report, which can be judicially reviewed by a new petition for review. The vacation of the original order would require the Board to permit petitioner to introduce relevant evidence of events subsequent to the original administrative proceeding. For sections 13 (g) and (h) of the Act provide that an order of the Board shall be based on the character of the organization as of the date the order is made. We submit that the Board may not on the one hand treat the proceeding as a limited remand under section 14(a) for the purpose of preventing petitioner from adducing relevant subsequent evidence, while on the other going beyond 14(a) by issuing new findings and a new Report not based on or required by the remand.

Respectfully submitted,

John J. Abt, Joseph Forer

[fol. 2860] . Certificate of Service (omitted in printing).

[fol. 2861]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

Before: Prettyman, Bazelon and Daraher, Circuit  
Judges, in Chambers.

ORDER DENYING MOTION TO REMAND PROCEEDING TO BOARD  
WITHOUT PREJUDICE TO RENEWAL—January 24, 1957

This case came on for consideration on petitioner's  
motion to remand, and said motion was argued by counsel.

Upon consideration whereof it is Ordered by the Court  
that the aforesaid petitioner's motion be and it is hereby;  
denied without prejudice to renewal at the time of the  
argument on the merits.

Per Curiam.

Dated: January 24, 1957.

[fol. 2862]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

RENEWED MOTION TO REMAND PROCEEDING TO BOARD—  
Filed April 18, 1957

The petitioner, by its attorneys, hereby renews its mo-  
tion that the Court remand the proceeding to the Board  
with directions that the Board either (1) issue findings  
and recommendations in conformity with section 14(a)  
of the Subversive Activities Control Act of 1950, or (2)  
vacate the Board's registration order of April 20, 1953  
and reopen the administrative proceeding.

Petitioner's original motion to remand was denied by order of the Court of January 24, 1957, "without prejudice to renewal at the time of the argument on the merits." This renewed motion is intended to bring the matter before the Court at the time of the argument on the merits, which is scheduled for May 27, 1957.

The grounds for this motion and the argument in support of it are set forth in petitioner's brief, heretofore filed with the Court, at pages 88-99.

John J. Abt, Joseph Forer, Attorneys for Petitioner.

Certificate of Service (omitted in printing).

[fol. 2863]

[File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

Before: Prettyman, Bazelon and Danaher, Circuit Judges, in Chambers.

ORDER DENYING PETITIONER'S RENEWED MOTION TO REMAND  
—May 17, 1957

Upon consideration of petitioner's renewed motion to remand and of respondent's opposition, it is

Ordered by the Court that the aforesaid petitioner's motion be, and it is hereby, denied.

Per Curiam.

Dated: May 17, 1957.

Bazelon, Circuit Judge: I would defer consideration of this motion until the hearing.

[fol. 2864] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

[Title omitted]

MOTION FOR SUMMARY REMAND—Filed February 17, 1959

The petitioner, by its attorneys, moves that the Court summarily remand the case to the respondent with directions that the respondent (1) conform its finding on "secret practices" under section 13(e)(7) of the Internal Security Act to the finding and holding heretofore made by the Court on that subject, and (2) reconsider its conclusions, order and recommendation in the light of the conformed finding.

Section 13(e)(7) of the Act provides:

"(e) In determining whether any organization is a 'Communist-action organization,' the Board shall take into consideration—

• • • • •

(7) the extent to which, for the purpose of concealing foreign direction, domination, or control, or of expediting or promoting its objectives, (i) it fails to disclose, or resists efforts to obtain information as to, its membership (by keeping membership lists in code, by instructing members to refuse to acknowledge membership, or by any other method); (ii) its members refuse to acknowledge membership therein; (iii) it fails to disclose, or resists efforts to obtain information as to, records other than membership lists; (iv) its meetings are secret; and (v) it otherwise operates on a secret basis;"

In its original Report the Board made the following finding on this criterion, adverse to petitioner:

"Upon the basis of the foregoing and on the whole record, we find that Respondent [i.e., the Communist Party] engages in extensive secret practices, within the meaning of the Act, for the purpose of promoting its objectives and thereby to advance those of the world Communist movement; and for concealing its direction, domination and control by the Soviet Union," (J. A. 117.)

[fol. 2865]. The importance of this finding may be gathered in part from the fact that the original Report devotes 13 closely printed pages (J. A. 105-117) to the subject of "secret practices," or more than one-tenth of the entire findings of fact of the original Report (J. A. 4-128).

On review of the Board's findings and order, this Court differed with the Board's finding on "secret practices." The Court held (emphasis supplied):

"With respect to operations on a secret basis, referred to in Section 13(e)(7) of the Act, the Board made findings on a number of such practices . . . . There is no serious dispute as to the facts in respect to these operations. Indeed the Party's witnesses testified to many of them, and the amended answer impliedly admits them. The dispute centers about the purposes of the practices. The Party contended, and now contends, that it was forced into these practices in order to protect the constitutional rights of its members to speak and to assemble, and to safeguard them from social and economic persecution. The Government says that these practices were for the purpose of concealing an unlawful conspiracy. The Board concluded that the practices were undertaken for the purposes of concealing the true nature of the Party and of promoting its objectives.

"The question, whether the secret practices of the Party are for the purpose of protecting the liberties of the members or are for the purpose of promoting the objectives of the Party, is a nebulous one. The two purposes may well overlap. In so far as protection of its members from public identification as Com-



munists also promotes the objectives of the Party, both purposes could exist together. In a doubtful situation such as that on this point, *we strike the finding as to purpose*. At the same time we are of opinion that the Party's view of the limited purpose of secrecy is not shown by a preponderance of the evidence. On this point *we conclude simply that a defined purpose is not proven.*" (*Communist Party v. Subversive Activities Control Board*, 223 F. 2d 531, 574-5.)

It is apparent that under this holding of the Court the "secret practices" criterion of the Act can not be relied upon to support a registration order against petitioner.

Following remand of the case to the Board pursuant to the decision of the Supreme Court (*Communist Party v. Subversive Activities Control Board*, 351 U.S. 115), the Board expunged the testimony of the three challenged witnesses, Crouch, Johnson and Matusow, as well as documents received through them (Mod. Rep. 5), and issued a Modified Report. On this remand, of course, there was no additional evidence received on the merits, still less on the subject of "secret practices." The record on the merits, including evidence adverse to petitioner on "secret practices," was substantially diminished by the expurgation of testimony.

The Modified Report, however, disregarded and contradicted the Court's finding on "secret practices," quoted above. Contrary to the Court's action in striking the finding as to purpose and in holding that "a defined purpose is not proven," the Modified Report found (p. 193, emphasis supplied):

"Upon the basis of the foregoing and on the whole record, we find that respondent engages in extensive secret practices within the meaning of the Act, *for the primary purpose of promoting its objectives and thereby to advance those of the world Communist movement.*"

This passage obviously retains a "purpose" finding expressly stricken by this Court. Thereby the Board, con-

trary to this Court's holding, has relied on section 13(e)(7) of the Act to support issuance of a registration order against petitioner.

The case was again remanded to the Board for the limited purpose of requiring production of certain documents and striking a finding regarding an exhibit. *Communist Party v. Subversive Activities Control Board*, 254 F. 2d 314. In its opinion on that occasion, this Court stated (at 318): "Upon reexamination we adhere to, and now reaffirm, the views we expressed in our [previous] opinion in that case."

The Board has now filed its "Modified Report on Second Remand." This strikes a few passages from the first Modified Report, which otherwise is retained intact. The finding quoted above on "secret practices" is not disturbed.

It follows that the Board's ultimate conclusion and order rest in part on an unpermissible finding made in defiance of this Court's finding. Accordingly, the case should be returned to the Board for administrative redetermination on a correct basis, even if it were true that the order might be sustained without the incorrect finding. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 [fol. 2867] U.S. 469; *S.E.C. v. Chenery Corp.*, 318 U.S. 80; *Colorado Wyoming Gas Co. v. F.P.C.*, 324 U.S. 626, 634; *Democrat Printing Co. v. F.C.C.*, 91 App. D.C. 72, 202 F. 2d 298; *Mississippi River Fuel Corp. v. F.P.C.*, 82 App. D.C. 208, 163 F. 2d 433; *Kutcher v. Gray*, 91 App. D.C. 266, 199 F. 2d 783.

In *Chenery* the Supreme Court stated: "The grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." (At 87.) "We merely hold that an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained." (At 95.) In the *Mississippi River Fuel Corp.* case, *supra*, this Court (per Prettyman, J., stated:

"It [the Supreme Court] has also held that the grounds upon which an administrative order must be judged are those upon which the record discloses that

the action was based, and that where the decision of a Commission is explicitly based upon the applicability of certain principles, its validity must likewise be judged on that basis." (163 F. 2d at 449.)

In the *Democrat Printing Co.* case, *supra*, this Court (per Bazelon, J.) said: "Our review is limited to the reasons which the Commission relied upon for its action." (202 F. 2d at 303.)

Since there can be no dispute that the Board has relied upon a finding stricken by this Court, and since that fact requires remanding the case, no useful purpose would be served, and only unnecessary delay, effort and expense incurred, by having the case go to briefing and argument on the numerous other points involved.

Respectfully submitted,

John J. Abt, Joseph Forer, Attorneys for Petitioner.

[fol. 2868] Certificate of Service (omitted in printing).

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[fol. 2869] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,850

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COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

v.

SUPERSIVE ACTIVITIES CONTROL BOARD, Respondent.

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Before: Prettyman, Chief Judge, and Bazelon and Danaher, Circuit Judges, in Chambers.

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY REMAND  
—March 3, 1959

Upon consideration of petitioner's motion for summary remand and of respondent's memorandum in objection, it is

Ordered by the court that the motion for summary remand is denied.

Per Curiam.

Dated: March 3, 1959

[fol. 2871] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 2872]

SUPREME COURT OF THE UNITED STATES

No. 537, October Term, 1959

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ORDER GRANTING MOTION FOR LEAVE TO USE AS PART OF THE  
RECORD THE PRINTED RECORD IN NO. 48, OCTOBER TERM,  
1955—February 5, 1960

On Consideration of the motion for leave to use as part of the record the printed record heretofore filed with this Court in No. 48, October Term, 1955, in this case,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

February 5, 1960

{fol. 2873}

SUPREME COURT OF THE UNITED STATES

No. 537, October Term, 1959

COMMUNIST PARTY OF THE UNITED STATES OF AMERICA,  
Petitioner,

vs.

SUBVERSIVE ACTIVITIES CONTROL BOARD

ORDER ALLOWING CERTIORARI—February 5, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceeding below which accompanied the petition shall be treated as though filed in response to such writ.